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FIRA PAPERS

No. 2 December 1977

SELECTED READINGS IN CANADIAN LEGISLATION - - -
AFFECTING FOREIGN INVESTMENT IN CANADA

PART I: FEDERAL LAWS AND REGULATIONS
AS OF OCTOBER 1977

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Government
of Canada

Foreign Investment
Review Agency

Gouvernement
du Canada

Agence d'examen de
l'investissement étranger

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SELECTED READINGS IN CANADIAN LEGISLATION
AFFECTING FOREIGN INVESTMENT IN CANADA

PART I: FEDERAL LAWS AND REGULATIONS
AS OF OCTOBER 1977

Prepared by
Policy Research Division
Research and Analysis Branch

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INTRODUCTION

"Selected Readings in Canadian Legislation Affecting Foreign Investment in Canada" is the second in a series of Occasional Papers to be published by the Foreign Investment Review Agency on topics related to foreign direct investment in Canada. Part I covers federal laws and regulations. It provides excerpts from federal statutes and regulations affecting foreign investment in Canada and constitutes a revision and update of a previous paper on the subject published in March, 1972. Part II will cover provincial laws and regulations affecting foreign investment in the various provinces and is expected to be published in Spring 1978.

Each chapter of this publication contains excerpts from a particular federal law or regulation together with a reference to the source document from which the excerpts have been taken. The reader may want to refer to those documents for further details. The excerpts were selected as having relevance to foreign investment in Canada. The general thrust of the excerpts is briefly outlined at the beginning of each chapter. These outlines are not intended to paraphrase the provisions of the statutes or regulations or to be comprehensive in their coverage.

The paper is meant to serve only as a guide to relevant laws and regulations. To the best of the Agency's knowledge, the excerpts were accurate as of October 1977.

PART I

GENERAL LEGISLATION

FOREIGN INVESTMENT REVIEW ACT

S.C. 1973-74, c. 46

The Foreign Investment Review Act is found in Chapter 46 of the Statutes of Canada 1973-74. As the whole of the Act is concerned with foreign investment in Canada, rather than reproduce excerpts, a printed copy of the Act is enclosed inside the back cover of this paper*. The following paragraphs describe the Act, its purpose and administration.

The Act received Royal Assent on December 12, 1973. It was subsequently proclaimed into force in two phases. The first phase, relating to the acquisition of control of Canadian business enterprises, came into force on April 9, 1974 and the second phase, relating to the establishment of new businesses, was proclaimed on October 15, 1975.

Foreign Investment Review Regulations covering both acquisitions and the establishment of new businesses were published in the Canada Gazette, Part II on March 23, 1977 (SOR/77-226). These Regulations consolidate and revise earlier Regulations which had been issued separately for acquisitions and new businesses.

Subsection 4 (2) of the Foreign Investment Review Act authorizes the Minister to issue guidelines with respect to the application and administration of any provision of the Act. The guidelines which have been issued, together with the dates on which they were published in Part I of the Canada Gazette, are listed below:

1. Guidelines Concerning Real Estate Businesses, April 6, 1974.
2. Terms and Conditions for Venture Capital Exemption, April 27, 1974.
3. Guidelines Concerning Corporate Re-organizations, April 26, 1975; Amendment March 19, 1977.
4. Guidelines Concerning Related Business, August 2, 1975; Amendment March 19, 1977.
5. Guidelines Concerning Acquisition of Interests in Oil and Gas Rights, February 21, 1976.

* Once the new Immigration Act, 1976 has been proclaimed there will be consequential amendments to the subsections 3 (1) and 3 (5) of the Foreign Investment Review Act whereby the term "permanent resident" will be substituted for the term "landed immigrant".

Purpose of the Act

In recognition of the extent to which control of Canadian industry has been acquired by non-Canadians and the effect it has on the ability of Canadians to maintain effective control over their economic environment, the Foreign Investment Review Act was enacted to ensure that new foreign direct investment will be allowed only if it is, or is likely to be, of significant benefit to Canada.

Scope of the Act

The Foreign Investment Review Act applies to two forms of foreign investment:

- the acquisition of control of a Canadian business enterprise by foreign individuals, corporations, governments or groups containing foreign members, through the acquisition of shares or of the property used in carrying on the business,
- the establishment of a new business in Canada by foreign persons who do not already have an existing business in Canada, or by foreign persons who have an existing business in Canada if the new business is unrelated to the existing business.

The Act does not apply to:

- purchases of shares or other securities of Canadian companies where such purchases do not involve the acquisition of control of the companies concerned,
- investment to expand the existing business operations of a foreign controlled business in Canada,
- the establishment of new businesses in Canada which are related to the investor's existing business operations in Canada,
- the acquisition of control of a Canadian business whose gross assets do not exceed \$250,000 and whose gross revenues do not exceed \$3,000,000 by a person who is already carrying on in Canada a business related to the one being acquired.

Criteria for Significant Benefit

The Act sets out five criteria by which to assess whether a proposed investment will be of significant benefit to Canada:

- (1) the effect on the level and nature of economic activity in Canada, including the effect on employment, resource processing, use of Canadian parts, components and services, and exports;
- (2) the degree and significance of participation by Canadians in the business enterprise and in any industry or industries in Canada of which the business enterprise forms a part;
- (3) the effect on productivity, industrial efficiency, technological development, product innovation, and product variety in Canada;
- (4) the effect on competition within any industry or industries in Canada;
- (5) the compatibility with national industrial and economic policies, taking into consideration industrial and economic policy objectives enunciated by any province likely to be significantly affected.

Administration of the Act

The Act requires that a notice of every investment proposal or actual investment to which the Act applies be filed with the Foreign Investment Review Agency in the form prescribed by Regulations. The review is carried out, in the first instance, by the Agency, which then briefs and advises the Minister responsible for the administration of the Act. The Minister of Industry, Trade and Commerce has been so designated. The Minister, in turn, submits his recommendation to the Governor in Council who makes the final decision whether or not to allow the proposal. The Governor in Council may allow a proposal only if it is concluded that the proposal is likely to be of significant benefit to Canada.

If, on the basis of the information provided by the applicant, the Minister is unable to complete his assessment, for example because of the absence of some piece of information that is important in considering the likely effects of the proposed investment, or having completed his assessment is unable to recommend allowance, a notice is issued advising the applicant of this fact and of his right to make further representations. Should the applicant wish to avail himself of the right to further representations, he must inform the Agency to that effect within 30 days. If he does so, he must be allowed a

reasonable time to make his representations including the submission of any further undertakings he may wish to put forward in connection with the proposal. Once all the representations and consultations have been concluded, the Minister reconsiders his opinion and makes his recommendation to the Governor in Council.

The Act contains a safeguard against unnecessary delay on the part of the Government in the assessment and decision-making process. If within 60 days of the certified date of receipt of a notice the Governor in Council has made no decision, and if no notice has been sent in the circumstances described in the immediately preceding paragraph, the Governor in Council is deemed to have allowed the investment.

New Regulations governing the procedures for making application under the Act were introduced in March, 1977. The new Regulations adopt an abbreviated form of notice for small business investment proposals. These are proposals involving the establishment or acquisition of a business with gross assets of less than \$2 million and fewer than 100 employees. It is expected that in most small business cases the information provided in the abbreviated notice will be sufficient to enable the Minister to recommend, without delay, that the investment be allowed.

Where a non-Canadian proposes to make or has made an investment which is subject to review under the Act and has not filed a notice with the Agency, the Minister is authorized to require that the appropriate notice be filed. The Act also provides that the Minister may institute legal proceeding in any case where the investor fails to comply with the terms and conditions of his investment as set out in his notice and/or in the plans and undertakings submitted therewith.

For further information on the Act, the reader is referred to the FIRA Information Kit which contains copies of the Regulations, the Guidelines, the notice forms, in addition to a booklet describing in simplified terms the principal provisions of the Act. The Information Kit can be obtained by writing to the Foreign Investment Review Agency, P.O. Box 2800, Postal Station "D", Ottawa, Ontario, Canada, K1P 6A5.

THE CANADA BUSINESS CORPORATIONS ACT

S.C. 1974-75-76, c. 33

Section 100 of the Canada Business Corporations Act requires that a majority of the directors of a federally incorporated company be resident Canadians. In the case of holding companies earning less than 5 percent of gross revenues from Canadian operations, only one third of the directors must be Canadian residents. Section 109 further requires that no business be transacted at a meeting of directors unless a majority of the directors present are resident Canadians.

While there are no provisions in the Canada Business Corporations Act which in themselves place limits on the ownership of shares by non-residents in a federally incorporated company, sections 24 and 168 of the Act allow a corporation to implement its own restrictions regarding the ownership and transfer of shares. A corporation can issue more than one class of shares. To each class it can attach different rights and privileges and each class can be made subject to ownership and transfer restrictions. The rights, privileges, restrictions and conditions attached to each class of shares must be specified in the articles of incorporation.

All federally incorporated companies that were incorporated prior to the date of proclamation of the Act have five years (until December 15, 1980) to apply for a certificate of continuance and bring themselves into compliance with the new provisions of the Act or they will be automatically dissolved.

Part XVI of the Act is concerned with takeover bids.

CANADA BUSINESS CORPORATIONS ACT

Exceptions to Application

- 3 (2) This Act does not apply to a body corporate that is:
- (a) a bank including a bank to which the Quebec Savings Banks Act applies,
 - (b) an insurance company within the meaning of the Canadian and British Insurance Companies Act,
 - (c) a trust company within the meaning of the Trust Companies Act, or
 - (d) a loan company within the meaning of the Loan Companies Act.

Registered Office

19 (1) A corporation shall at all times have a registered office in the place within Canada specified in its articles.

19 (2) A notice of registered office in prescribed form shall be sent to the Director together with any articles that designate or change the place of the registered office of the corporation.

Class of Shares

24 (3) The articles may provide for more than one class of shares and, if they so provide, there shall be set out therein the rights, privileges, restrictions and conditions attaching to the shares of each class.

24 (4) The articles shall provide for at least one class of shares the holders of which are entitled

- (a) to vote at all meetings of shareholders except meetings at which only holders of a specified class of shares are entitled to vote; and
- (b) to receive the remaining property of the corporation upon a dissolution.

Constraints on Shares

168 (1) Subject to sections 170 and 171, a corporation any of the issued shares of which are or were part of a distribution to the public may by special resolution amend its articles

to constrain the issue or transfer of its shares in accordance with the regulations for any purpose and, in particular, for the purpose of enabling the corporation or any of its affiliates to qualify under any law of Canada referred to in the regulations

- (a) to obtain a licence to carry on any business;
- (b) to become a publisher of a Canadian newspaper or periodical; or
- (c) to acquire shares of a financial intermediary as defined in the regulations.

168 (2) Where a corporation has passed a resolution under subsection (1) amending its articles to constrain the issue or transfer of its shares for any purpose other than the purposes set out in paragraphs (1)(a) to (c), the amendment ceases to have effect five years after the date the resolution is passed unless the corporation before the termination of that five-year period

- (a) decides by special resolution to extend the constraint provision for a further period not exceeding five years; and
- (b) sends a copy of the resolution to the Director certified in accordance with subsection 250 (1).

168 (3) A corporation referred to in subsection (1) may by special resolution amend its articles to remove any constraint on the issue or transfer of its shares.

Number of Directors

97 (2) A corporation shall have one or more directors but a corporation, any of the issued securities of which are or were part of a distribution to the public, shall have not fewer than three directors, at least two of whom are not officers or employees of the corporation or its affiliates.

Qualifications of Directors

100 (3) A majority of the directors of a corporation must be resident Canadians.

100 (4) Notwithstanding subsection (3), not more than one-third of the directors of a holding corporation need be resident Canadians if the holding corporation earns in Canada directly or through its subsidiaries less than five per cent of the gross revenues of the holding corporation and

all of its subsidiary bodies corporate together as shown in the most recent consolidated financial statements of the holding corporation or the most recent financial statements of the holding corporation and its subsidiary bodies corporate.

Definition

2 (1) In this Act,

"resident Canadian" means an individual who is

- (a) a Canadian citizen ordinarily resident in Canada,
- (b) a Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons, or
- (c) a landed immigrant* within the meaning of the Immigration Act and ordinarily resident in Canada, except a landed immigrant* who has been ordinarily resident in Canada for more than one year after the time at which he first became eligible to apply for Canadian citizenship;

Meeting of Directors

109 (3) Directors, other than directors of a corporation referred to in subsection 100 (4), shall not transact business at a meeting of directors unless a majority of directors present are resident Canadians.

109 (4) Notwithstanding subsection (3), directors may transact business at a meeting of directors where a majority of resident Canadian directors is not present if

- (a) a resident Canadian director who is unable to be present approves in writing or by telephone or other communications facilities the business transacted at the meeting; and
- (b) a majority of resident Canadian directors would have been present had that director been present at the meeting.

* Once the new Immigration Act, 1976 has been proclaimed there will be a consequential amendment whereby the term "permanent resident" will be substituted for the term "landed immigrant".

Delegation

110 (1) Directors of a corporation may appoint from their number a managing director who is a resident Canadian or a committee of directors and delegate to such managing director or committee any of the powers of the directors.

110 (2) If the directors of a corporation, other than a corporation referred to in subsection 100 (4), appoint a committee of directors, a majority of the members of the committee must be resident Canadians.

Takeover Bids

Part XVI of the Canada Business Corporations Act is concerned with takeover bids. Interested persons should refer to the statute.

Source: "An Act respecting Canadian Business Corporations",
Statutes of Canada, 1974-75-76, Chapter 33, Queen's
Printer, Ottawa.

THE CITIZENSHIP ACT

S.C. 1974-75-76, c. 108

Section 5 stipulates that persons lawfully admitted to Canada for permanent residence are entitled to Canadian citizenship status provided they have fulfilled the residency requirements.

Section 33 of the Citizenship Act provides that the acquisition of land by aliens shall be subject to such terms and conditions as may be imposed by the Lieutenant Governor in Council of the province where the land is situated.

The Citizenship Act, which received Royal Assent on July 16, 1976, came into force on February 15, 1977. Subsections 33 (2) to 33 (6) which deal specifically with provincial authority with respect to the acquisition of property by non-Canadians are to be proclaimed separately in each province at their request. These provisions came into force on April 22, 1977 in the province of Alberta.

CITIZENSHIP ACT

Rights to Citizenship

5 (1) The Minister shall grant citizenship to any person who, not being a citizen, makes application therefor and

- (a) is eighteen years of age or over;
- (b) has been lawfully admitted to Canada for permanent residence, and has, within the four years immediately preceding the date of his application, accumulated at least three years of residence in Canada calculated in the following manner:
 - (i) for every day during which he was resident in Canada before his lawful admission to Canada for permanent residence he shall be deemed to have accumulated one-half of a day of residence, or
 - (ii) for every day during which he was resident in Canada after his lawful admission to Canada for permanent residence he shall be deemed to have accumulated one day of residence;
- (c) has an adequate knowledge of one of the official languages of Canada;
- (d) has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and
- (e) is not under a deportation order and is not the subject of a declaration by the Governor in Council made pursuant to section 18.

(2) The Minister shall grant citizenship

- (a) to any person who, not being a citizen, has been lawfully admitted to Canada for permanent residence and is the minor child of a citizen if an application for citizenship is made to the Minister by a person authorized by regulation to make the application on behalf of the minor child; or

(b) to any person who, not being a citizen,

(i) was born outside Canada before the coming into force of this Act of a mother who was a citizen at the time of his birth, and

(ii) was not entitled, immediately before the coming into force of this Act, to become a citizen under subparagraph 5(1)(b)(i) of the former Act,

if within two years after the coming into force of this Act or within such extended period as the Minister may authorize, an application for citizenship is made to the Minister by a person authorized by regulation to make the application.

Rights of Non-Canadians

33 (1) Subject to this section,

(a) real and personal property of every description may be taken, acquired, held and disposed of by a person who is not a Canadian citizen in the same manner in all respects as by a Canadian citizen; and

(b) a title to real and personal property of every description may be derived through, from or in succession to a person who is not a Canadian citizen in the same manner in all respects as though through, from or in succession to a Canadian citizen.

Provincial Authority re Acquisitions of Property by Non-Canadians

33 (2) The Lieutenant Governor in Council of a province or such other person or authority in the province as is designated by the Lieutenant Governor in Council thereof is authorized, subject to subsection (6), to prohibit and annul or in any manner restrict the taking or acquisition directly or indirectly of, or the succession to, any interest in real property located in the province by persons who are not Canadian citizens or by corporations or associations that, in the opinion of the Lieutenant Governor in Council or the other person or authority so designated, are effectively controlled by persons who are not Canadian citizens.

33 (3) The Lieutenant Governor in Council of a province may make regulations applicable in the province for the purposes of determining

- (a) what transactions constitute a direct or an indirect taking or acquisition of any interest in real property located in the province;
- (b) what constitutes effective control of a corporation or association by persons who are not Canadian citizens; and
- (c) what constitutes an association.

Penalty

33 (4) Every person who fails to comply with any prohibition, annulment or restriction made pursuant to subsection (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both.

33 (5) Where a corporation has committed an offence under subsection (4), any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

Restrictions on Provincial Authority

33 (6) Subsections (2) and (3) do not operate so as to authorize or permit the Lieutenant Governor in Council of a province or such other person or authority as is designated by the Lieutenant Governor in Council thereof to make any decision or take any action that

- (a) prohibits and annuls or restricts the taking or acquisition directly or indirectly of, or the succession to, any interest in real property located in a province by a landed immigrant* ordinarily resident in Canada;
- (b) conflicts with any legal obligation of Canada under any international law, custom or agreement;
- (c) discriminates as between persons who are not Canadian citizens on the basis of their nationalities, except in so far as more favourable treatment is required by any legal obligation of Canada under any international law, custom or agreement;

* Once the new Immigration Act, 1976 has been proclaimed there will be a consequential amendment whereby the term "permanent resident" will be substituted for the term "landed immigrant".

- (d) hinders any foreign state in taking or acquiring real property located in a province for diplomatic or consular purposes; or
- (e) prohibits and annuls or restricts the taking or acquisition directly or indirectly of any interest in real property located in a province by any person in the course or as a result of an investment considered and allowed by the Governor in Council under the Foreign Investment Review Act.

Coming Into Force

33 (7) Subsections (2) to (6) shall come into force in any province only upon a day fixed in a proclamation of the Governor-in-Council declaring those subsections to be in force in that province.

Application of Section

33 (8) This section does not operate so as to

- (a) qualify any person for any office or for any municipal, parliamentary or other franchise;
- (b) qualify any person to be the owner of a Canadian ship;
- (c) qualify any person to take, acquire, hold or dispose of any property that under or pursuant to any Act of the Parliament of Canada may be taken, acquired, held or disposed of only by Canadian citizens;
- (d) entitle any person to any right or privilege as a Canadian citizen except such rights and privileges in respect of property as are hereby expressly given to him; or
- (e) affect any estate or interest in real or personal property to which a person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the 4th day of July, 1883, or in pursuance of any devolution by law on the death of any person dying before that day.

Source: "An Act respecting citizenship", Statutes of Canada, 1974-75-76, Chapter 108, Queen's Printer, Ottawa.

COMBINES INVESTIGATION ACT

R.S.C. 1970, c. C-23
S.C. 1974-75-76, c. 76

Amendments made to the Combines Investigation Act in 1975 empower the Restrictive Trade Practices Commission to nullify the effect in Canada of any judgment, order or decree made by foreign courts or tribunals if such a judgment, order or decree would (a) adversely affect competition in Canada, (b) make Canadian industry less efficient without increasing competition to restore such efficiency or (c) reduce or injure trade or commerce in Canada without compensating advantages. (sec. 31.5).

The Restrictive Trade Practices Commission is also empowered to nullify the effect in Canada of any foreign law or of any directive to a Canadian business from a foreign government, or from any foreign person in a position to give orders to a Canadian business (e.g. the parent corporation), if such direction is for the purpose of giving effect to a foreign law and would have one of the effects noted above. (sec. 31.6)

COMBINES INVESTIGATION ACT

Foreign Judgment or Order

31.5 Where, on application by the Director, and after affording a reasonable opportunity to be heard to all persons and companies to whom an order hereinafter referred to would apply, the Commission finds that

- (a) a judgment, decree, order or other process given, made or issued by or out of a court or other body in a country other than Canada can be implemented in whole or in part by persons in Canada, by companies incorporated by or pursuant to an Act of Parliament or of the legislature of a province, or by measures taken in Canada, and
- (b) the implementation in whole or in part of the judgment, decree, order or other process in Canada would
 - (i) adversely affect competition in Canada,
 - (ii) adversely affect the efficiency of trade or industry in Canada without bringing about or increasing in Canada competition that would restore and improve such efficiency,
 - (iii) adversely affect the foreign trade of Canada without compensating advantages, or
 - (iv) otherwise restrain or injure trade or commerce in Canada without compensating advantages,

the Commission may, by order, direct that

- (c) no measures be taken in Canada to implement the judgment, decree, order or process, or
 - (d) no measures be taken in Canada to implement the judgment, decree, order or process except in such manner as the Commission prescribes for the purpose of avoiding an effect referred to in subparagraphs (b)(i) to (iv).
- 1974-75-76, c. 76, s. 12.

Foreign Laws and Directives

31.6 (1) Where, on application by the Director, and after affording to the person or company, hereinafter referred to, a reasonable opportunity to be heard, the Commission finds

that a decision has been or is about to be made by a person in Canada or a company incorporated by or pursuant to an Act of Parliament or of the legislature of a province

(a) as a result of

(i) a law in force in a country other than Canada, or

(ii) a directive, instruction, intimation of policy or other communication to that person or company or to any other person from

(A) the government of a country other than Canada or of any political subdivision thereof that is in a position to direct or influence the policies of that person or company, or

(B) a person in a country other than Canada who is in a position to direct or influence the policies of that person or company,

where the communication is for the purpose of giving effect to a law in force in a country other than Canada, and that the decision, if implemented, would have or would be likely to have any of the effects mentioned in subparagraphs 31.5(b)(i) to (iv), or

(b) as a result of a directive, instruction, intimation of policy or other communication to that person or company or to any other person, from a person in a country other than Canada who is in a position to direct or influence the policies of that person or company, where the communication is for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in violation of section 32,

the Commission may, by order, direct that

(c) in a case described in paragraph (a) or (b), no measures be taken by the person or company in Canada to implement the law, directive, instruction, intimation of policy or other communication, or

- (d) in a case described in paragraph (a), no measures be taken by the person or company in Canada to implement the law, directive, instruction, intimation of policy or other communication except in such manner as the Commission prescribes for the purpose of avoiding an effect referred to in subparagraphs 31.5(b)(i) to (iv).

Source; "An Act to amend the Combines Investigation Act and the Bank Act and to repeal an Act to amend the Combines Investigation Act and the Criminal Code", Statutes of Canada, 1974-75-76, Chapter 76, Queen's Printer, Ottawa.

INCOME TAX ACT

S.C. 1970-71-72, c. 63
S.C. 1973-74, c. 14
S.C. 1974-75-76, c. 26
S.C. 1974-75-76, c. 106
S.C. 1976-77, c. 4

The extracts from the Income Tax Act and their summaries which appear in this paper have been limited to the more often quoted provisions of the Income Tax Act which can affect foreign investment. In view of the number of provisions of the Act which can, directly or indirectly, affect foreign investment and, given the complexity of the Act, no attempt has been made to cover all possible applications or exemptions that apply to any particular provision.

In considering the provision of the Income Tax Act relating to non-resident investment, the reader should bear in mind that their application in a particular case may be affected by bilateral tax agreements that Canada has with other countries.

Limitation re Deduction of Interest by Certain Corporations (sec. 18)

Section 18 of the Income Tax Act is intended to discourage the formation of thinly capitalized corporations in Canada by non-residents. This, in general terms, is accomplished by stipulating that where the ratio of total shareholders equity to the debt due to specified non-residents is less than 1 to 3, a part of the interest paid to such non-resident shareholders will not be deductible as an expense by the corporation. A specified non-resident is defined for these purposes as a shareholder that, either individually or in conjunction with associates, has at least 25 percent of the issued shares of any class of the corporation and is

- (1) a person not resident in Canada (whether natural, institutional, or corporate) or
- (2) a non-resident owned investment corporation.

Limitation re Advertising Expense Deductions (sec. 19)

Outlays for advertising directed primarily to a market in Canada are not deductible in computing taxable income if

- (a) the advertisement appears in a non-Canadian newspaper or periodical, or

- (b) the advertisement is broadcast by a foreign broadcasting undertaking.

Inadequate Considerations (sec. 69)

Where transactions between residents and non-residents who are not dealing at arm's length do not involve payments that would be viewed as "reasonable" in arm's length transactions, only the "reasonable" amount (regardless of what has actually been paid or is payable) will be, for the purposes of computing taxable income, regarded as the amount paid or payable.

Small Business Deduction (sec. 125 and 190)

A Canadian-controlled private corporation is under certain circumstances eligible for a lower rate of tax. A private corporation for this purpose is a corporation that is neither a public corporation nor a corporation controlled by a public corporation.

The lower tax rate is generally available on up to \$150,000 of taxable income in any particular taxation year. The low rate may no longer be claimed in the year after the corporation and, where applicable, associated companies, have accumulated a total of \$750,000 of active business income. The low rate is restricted to income derived from an "active" business carried on in Canada. The full corporate tax must be paid on any income from property or from "inactive" businesses.

Tax on Income from Canada of Non-Resident Persons (sec. 212)

With certain exceptions, non-resident persons must pay a withholding tax of 25 percent, at source, on any amount that is paid or credited to them by a person resident in Canada in satisfaction of such charges as management fees, rents, royalties and interest.

There is an exemption to the withholding tax for interest paid by residents to non-residents in arm's length transactions in respect of bonds, debentures, or other debt obligations having a fixed term to maturity of five years or more. Furthermore, the debt obligation must be issued after June 23, 1975 and before 1979, and provide for no more than 25 percent of the debt to be repayable within 5 years.

Dividends paid by resident corporations to non-residents are also subject to a withholding tax. The general rate is 25 percent. The withholding tax on dividends paid to non-residents by corporations having a degree of Canadian ownership, as defined in the Act, is 5 percent less than the general rate.

Tax on Non-Canadian Corporations Carrying on Business in Canada
(Sec. 219)

Non-Canadian corporations carrying on business in Canada through a branch rather than through a subsidiary corporation are required to pay a special tax, commonly referred to as a branch tax. Generally, the rate is 25 percent of the corporation's taxable income. A corporation is not liable for this tax for a taxation year if it was, throughout the year, either a bank or a corporation whose principal business was the transportation of persons or goods, communications, or mining iron ore in Canada.

INCOME TAX ACT

INTERPRETATION

Definitions

248 (1) In this Act,

"non-resident" means not resident in Canada

"person", or any word or expressing descriptive of a person, includes any body corporate and politic, and the heirs, executors, administrators or other legal representatives of such person, according to the law of that part of Canada to which the context extends;

TAX LIABILITY

Tax Payable by Persons Resident in Canada

2 (1) An income tax shall be paid as hereinafter required upon the taxable income for each taxation year of every person resident in Canada at any time in the year.

Tax Payable by Non-Resident Persons

2 (3) Where a person who is not taxable under subsection (1) for a taxation year

(a) was employed in Canada,

(b) carried on a business in Canada, or

(c) disposed of a taxable Canadian property

at any time in the year or a previous year, an income tax shall be paid as hereinafter required upon his taxable income earned in Canada for the year determined in accordance with Division D.

LIMITATION RE DEDUCTION OF INTEREST BY CERTAIN CORPORATIONS

Limitation

18 (4) Notwithstanding any other provision of this Act, in computing the income for a taxation year of a corporation

resident in Canada from a business or property, no deduction shall be made in respect of that proportion of any amount otherwise deductible in computing its income for the year in respect of interest paid or payable by it on outstanding debts to specified non-residents that

(a) the amount, if any, by which

(i) the greatest amount that the corporations outstanding debts to specified non-residents was at any time in the year,

exceeds

(ii) 3 times the aggregate of

- (A) the corporation's paid-up capital limit (within the meaning of subsection 89(1)) at the commencement of the year,
- (B) the amount that the corporation's designated surplus would be immediately after the commencement of the year, if control of the corporation (within the meaning of Part VII) had been acquired by another corporation at that time,
- (C) the corporation's tax-paid undistributed surplus on hand at the commencement of the year,
- (D) the corporation's 1971 capital surplus on hand at the commencement of the year,
- (E) the corporation's capital dividend account (within the meaning of subsection 89 (1)) immediately after the commencement of the year, and
- (F) the amount, if any, by which the corporation's paid-up capital limit (within the meaning of subsection 89 (1)) at the end of the year exceeds the limit referred to in clause (A),

is of

(b) the amount determined under subparagraph (a) (i) in respect of the corporation for the year.

Meaning of Certain Expressions in Subsection (4)

18 (5) In subsection (4), "outstanding debts to specified non-residents" of a corporation at any particular time in a taxation year means

- (a) the aggregate of amounts each of which is an amount outstanding at that time as or on account of a debt or other obligation to pay an amount
 - (i) that was payable by the corporation to a person who was, at any time in the year,
 - (A) a shareholder of the corporation who, either alone or together with persons with whom the shareholder was not dealing at arm's length, owned 25% or more of the issued shares of any class of the corporation and who was
 - (I) a person not resident in Canada, or
 - (II) a non-resident-owned investment corporation, or
 - (B) a person described in subclause (A) (I) or (II) who was not dealing at arm's length with a shareholder of the corporation, if the shareholder, either alone or together with persons with whom he was not dealing at arm's length, owned 25% or more of the issued shares of any class of the corporation, and
 - (ii) on which any amount in respect of interest paid or payable by the corporation is or would be, but for subsection (4), deductible in computing the corporation's income for the year,

but does not include

- (b) where the corporation is a subsidiary of a non-resident life insurance corporation, the aggregate of amounts each of which is an amount outstanding at that time as or on account of a debt or other obligation to pay an amount to the life insurance corporation and such debt or other obligation has, by virtue of an

election made under subsection 138 (9), been included by the life insurance corporation in its taxation year that included the particular time as property held by it in the year in the course of carrying on an insurance business in Canada and the life insurance corporation has included the revenue therefrom in computing its income for the year from carrying on an insurance business in Canada.

LIMITATIONS RE ADVERTISING EXPENSE DEDUCTIONS

Limitation

19 (1) In computing income, no deduction shall be made in respect of an otherwise deductible outlay or expense of a taxpayer for advertising space in an issue of a non-Canadian newspaper or periodical dated after December 31, 1975 for an advertisement directed primarily to a market in Canada.

19 (3) Subsection (1) does not apply with respect to an advertisement in a special issue or edition of a newspaper that is edited in whole or in part and printed and published outside Canada if such special issue or edition is devoted to features or news related primarily to Canada and the publishers thereof publish such an issue or edition not more frequently than twice a year.

Definitions

19 (5) In this section,

(a) "Canadian issue" means,

(i) in relation to a newspaper, an issue, including a special issue,

(A) the type of which, other than the type for advertisements or features, is set in Canada,

(B) the whole of which, exclusive of any comics supplement, is printed in Canada,

(C) that is edited in Canada by individuals resident in Canada, and

- (D) that is published in Canada, and
- (ii) in relation to a periodical, an issue, including a special issue,
 - (A) the type of which, other than the type for advertisements, is set in Canada,
 - (B) that is printed in Canada,
 - (C) that is edited in Canada by individuals resident in Canada, and
 - (D) that is published in Canada,
 but does not include an issue of a periodical
 - (E) that is produced or published under a licence granted by a person who produces or publishes issues of a periodical that are printed, edited or published outside Canada, or
 - (F) the contents of which, excluding advertisements, are substantially the same as the contents of an issue of a periodical, or the contents of one or more issues of one or more periodicals, that was or were printed, edited or published outside Canada.
- (b) "Canadian newspaper or periodical" means a newspaper or periodical the exclusive right to produce and publish issues of which is held by one or more of the following:
 - (i) a Canadian citizen,
 - (ii) a partnership of which at least 3/4 of the members are Canadian citizens and in which interests representing in value at least 3/4 of the total value of the partnership property are beneficially owned by Canadian citizens,
 - (iii) an association or society of which at least 3/4 of the members are Canadian citizens,
 - (iv) Her Majesty in right of Canada or a province, or a municipality in Canada, or

(v) a corporation

- (A) that is incorporated under the laws of Canada or a province,
- (B) of which the chairman or other presiding officer and at least 3/4 of the directors or other similar officers are Canadian citizens, and
- (C) of which, if it is a corporation having share capital, at least 3/4 of the shares having full voting rights under all circumstances, and shares representing in the aggregate at least 3/4 of the paid-up capital, are beneficially owned by Canadian citizens or by corporations other than corporations controlled directly or indirectly by citizens or subjects of a country other than Canada;

(c) "issue of a non-Canadian newspaper or periodical" means an issue that is not a Canadian issue of a Canadian newspaper or periodical.

19.1 (1) Subject to subsection (2), in computing income, no deduction shall be made in respect of an otherwise deductible outlay or expense of a taxpayer made or incurred after this section comes into force for an advertisement directed primarily to a market in Canada and broadcast by a foreign broadcasting undertaking.

19.1 (2) Subject to subsection (3), in computing income, a deduction may be made in respect of an outlay or expense for an advertisement directed primarily to a market in Canada and broadcast by a foreign broadcasting undertaking pursuant to

- (a) a written agreement entered into on or before January 23, 1975;
- (b) a written agreement entered into after January 23, 1975 and before this section comes into force if the agreement is for a term of one year or less and by its express terms is not capable of being extended or renewed.

19.1 (3) No deduction may be made in respect of an outlay or expense made or incurred pursuant to an agreement referred to in paragraph (2)(a), or an extension or renewal thereof, when the outlay or expense is made or incurred after twelve months from the commencement of this section.

19.1 (4) In this section,

"foreign broadcasting undertaking" means a network operation of a broadcasting transmitting undertaking located outside Canada or on a ship or aircraft not registered in Canada;

"network" includes any operation involving two or more broadcasting undertakings whereby control over all or any part of the programs or program schedules of any of the broadcasting undertakings involved in the operation is delegated to a network operator.

4. (1) Sections 1 and 2 shall come into force on the 1st day of January, 1976.
4. (2) Section 3 shall come into force on a day to be fixed by proclamation.

INADEQUATE CONSIDERATIONS

69 (2) Where a taxpayer carrying on business in Canada has paid or agreed to pay, to a non-resident person with whom he was not dealing at arm's length as price, rental, royalty or other payment for or for the use or reproduction of any property, or as consideration for the carriage of goods or passengers or for other services, an amount greater than the amount (in this subsection referred to as "the reasonable amount") that would have been reasonable in the circumstances if the non-resident person and the taxpayer had been dealing at arm's length the reasonable amount shall, for the purpose of computing the taxpayer's income from the business, be deemed to have been the amount that was paid or is payable therefor.

69 (3) Where a non-resident person has paid or agreed to pay, to a taxpayer carrying on business in Canada with whom he was not dealing at arm's length as price, rental, royalty or other payment for or for the use or reproduction of any property, or as consideration for the carriage of goods or passengers or for other services, an amount less

than the amount (in this subsection referred to as "the reasonable amount") that would have been reasonable in the circumstances if the non-resident person and the taxpayer had been dealing at arm's length, the reasonable amount shall, for the purpose of computing the taxpayer's income from the business, be deemed to have been the amount that was paid or is payable therefor.

SMALL BUSINESS DEDUCTION

Deduction

125 (1) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the year, a Canadian-controlled private corporation, an amount equal to 25% of the least of

- (a) the amount, if any, by which
 - (i) the aggregate of all amounts each of which is the income of the corporation for the year from an active business carried on in Canada,

exceeds
 - (ii) the aggregate of all amounts each of which is a loss of the corporation for the year from an active business carried on in Canada,
- (b) the amount, if any, by which the corporation's taxable income for the year exceeds the aggregate of
 - (i) 10/4 of the aggregate of amounts deducted under subsection 126 (1) from the tax for the year otherwise payable by it under this Part, and
 - (ii) 2 times the aggregate of amounts deducted under subsection 126 (2) from the tax for the year otherwise payable by it under this Part,
- (c) the corporation's business limit for the year, and
- (d) the amount, if any, by which the corporation's total business limit for the year exceeds its cumulative

deduction account at the end of the immediately preceding taxation year,

except that in applying this section for a taxation year after the 1972 taxation year, the reference in this subsection to "25%" shall be read as a reference to "24%" for the 1973 taxation year, "23%" for the 1974 taxation year, "22%" for the 1975 taxation year, and "21%" for the 1976 and subsequent taxation years.

Amount of Business Limit and Total Business Limit

125 (2) For the purposes of this section,

- (a) a corporation's "business limit" for a taxation year is \$150,000, and
- (b) its "total business limit" for a taxation year is \$750,000,

unless the corporation is associated in the year with one or more other Canadian-controlled private corporations in which case, except as otherwise provided in this section, its business limit for the year is nil and its total business limit for the year is nil.

Associated Corporations

125 (3) Notwithstanding subsection (2), if

- (a) all of the Canadian-controlled private corporations of a group that are associated with each other in a taxation year have filed with the Minister in prescribed form an agreement whereby, for the purposes of this section,
 - (i) they allocate an amount to one or more of them for the taxation year and the amount so allocated or the aggregate of the amounts so allocated, as the case may be, is \$150,000, and
 - (ii) they allocate an amount to one or more of them for the taxation year and the amount so allocated or the aggregate of the amounts so allocated, as the case may be, is \$750,000, and

- (b) the amount so allocated under subparagraph (a)(ii) to each such corporation for the taxation year is not less than that corporation's cumulative deduction account at the end of the immediately preceding taxation year,

the business limit for the year of each of the corporations is the amount so allocated to it under subparagraph (a)(i) and the total business limit for the year of each of the corporations is the amount so allocated to it under subparagraph (a)(ii).

Failure to File Agreement

125 (4) If any of the Canadian-controlled private corporations of a group that are associated with each other in a taxation year has failed to file with the Minister an agreement as contemplated by subsection (3) within 30 days after notice in writing by the Minister has been forwarded to any of them that such an agreement is required for the purpose of any assessment of tax under this Part, the Minister shall, for the purpose of this section,

- (a) allocate an amount to one or more of them for the taxation year, which amount or the aggregate of which amounts, as the case may be, shall equal \$150,000, and
- (b) allocate an amount to one or more of them for the taxation year, which amount or the aggregate of which amounts, as the case may be, shall equal \$750,000,

and in any such case, notwithstanding subsection (2), the business limit for the year of each of the corporations is the amount so allocated to it under paragraph (a) and the total business limit for the year of each of the corporations is the amount so allocated to it under paragraph (b).

Where Two Taxation Years Ending in Same Year

125 (5) Where a Canadian-controlled private corporation has 2 taxation years ending in the same calendar year (otherwise than by reason of a change made in the usual and accepted fiscal period of the corporation) and is associated in each of those taxation years with another Canadian-controlled private corporation that has only one taxation year ending in the calendar year, notwithstanding anything in this section, the business limit of the first-mentioned corporation under this Part for the second taxation year ending in the calendar year is nil.

Definitions

125 (6) In this section,

- (a) "Canadian-controlled private corporation" means a private corporation that is a Canadian corporation other than a corporation controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations or by any combination thereof; and
- (b) "cumulative deduction account" of a corporation at the end of any taxation year means the amount, if any, by which the aggregate of
 - (i) the corporation's taxable incomes for taxation years commencing after 1971 and ending not later than the end of the particular year, or
 - (ii) $\frac{4}{3}$ of the amounts deductible under section 112 or subsection 113 (1) from the corporation's incomes for those yearsexceeds the aggregate of
 - (iii) $\frac{4}{3}$ of the taxable dividends paid by the corporation in those years, and
 - (iv) 4 times the amount, if any, by which the corporation's refundable dividend tax on hand (within the meaning assigned by subsection 129 (3)) at the end of the particular year exceeds its dividend refund (within the meaning assigned by subsection 129 (1)) for the particular year.

TAX WHEN CORPORATION BECOMES A NON-CANADIAN CONTROLLED PRIVATE CORPORATION

Tax Payable

190 (1) Where at any time in a taxation year and after 1971 a corporation that was, at a previous time, a Canadian-controlled private corporation becomes a private corporation that is controlled directly or indirectly in any manner whatever by one or more non-resident persons, a tax of 25% is payable by the corporation under this Part for the year on its preferred-rate amount at that time.

Definition

190 (2) In this Part,

"preferred-rate amount" of a corporation at any particular time in a taxation year means the aggregate of

- (i) its preferred-rate amount, if any, at the end of the immediately preceding taxation year,
- (ii) 4 times the amount deductible under section 125 from the tax otherwise payable by the corporation under Part I for the year, and
- (iii) $\frac{4}{3}$ of the aggregate of amounts each of which is an amount in respect of a taxable dividend received by it in the year, after 1971 and before the particular time from another corporation controlled directly or indirectly in any manner whatever by it, equal to the amount so received to the extent that
 - (A) payment thereof by the other corporation operated to reduce the other corporation's preferred-rate amount, and
 - (B) the amount so received was not an amount in respect of which tax under Part VII was payable by the corporation,

less the aggregate of

- (iv) $\frac{4}{3}$ of the amount, if any, by which the aggregate of taxable dividends paid by the corporation in the year, after 1971 and before the particular time exceeds 3 times its dividend refund for the year, and
- (v) all amounts on which tax under this Part has become payable by the corporation as a result of any transaction occurring in the year and before the particular time.

TAX ON INCOME FROM CANADA OF NON-RESIDENT PERSONS

Tax

212 (1) Every non-resident person shall pay an income tax of 25% on every amount that a person resident in Canada pays or credits, or is deemed by Part I to pay or credit, to him as, on account or in lieu of payment of, or in satisfaction of,

- (a) a management or administration fee or charge,
 - (b) interest except
 - (vii) interest payable by a corporation resident in Canada to a person with whom that corporation is dealing at arm's length on any obligation where the evidence of indebtedness was issued by that corporation after June 23, 1975 and before 1979, if under the terms of the obligation or any agreement relating thereto, the corporation may not, under any circumstances, be obliged to pay more than 25% of,
 - (A) where the obligation is one of a number of obligations that comprise a single debt issue of obligations that are identical in respect of all rights (in equity or otherwise, either immediately or in the future and either absolutely or contingently) attaching thereto, except as regards the principal amount thereof, the aggregate of the principal amount of those obligations, or
 - (B) in any other case, the principal amount of the obligation,
- within 5 years of the date of issue of that single debt issue or that obligation, as the case may be, except in the event of a failure or default under the said terms or agreement.

Tax on Dividends

212 (2) Every non-resident person shall pay an income tax of 25% on every amount that a corporation resident in Canada pays or credits, or is deemed by Part I to pay or credit, to him as, on account or in lieu of payment of, or in satisfaction of a taxable dividend (other than a capital gains dividend within the meaning assigned by subsections 130.1 (4), 131 (1) or 133 (7.1)) or a capital dividend.

Where Degree of Canadian Ownership

212 (3) Notwithstanding subsection (2), where the corporation referred to in that subsection has a degree of Canadian ownership in the taxation year of the corporation during which the dividend is so paid or credited to the non-resident person referred to therein, the tax payable by the non-resident person on the amount referred to therein is the percentage of that amount that is equal to the percentage at which the non-resident person would otherwise be taxed on that amount by virtue of subsection (2) and any other law of Canada other than this Act, minus 5% of that amount.

Degree of Canadian Ownership Defined

257 (1) For the purposes of this Act, a corporation has a degree of Canadian ownership in a taxation year if throughout any 60-day period included in the 120-day period commencing 60 days before the first day of the year,

(a) the corporation complied with the following conditions:

(i) the corporation was resident in Canada,

(ii) either

(A) not less than 25% of the issued and outstanding shares of the corporation having full voting rights under all circumstances were owned by one or more individuals resident in Canada, one or more corporations controlled in Canada or a combination thereof, and equity shares representing in the aggregate not less than 25% of that part of the paid-up capital of the corporation that was represented by all the issued and outstanding equity shares of the corporation were owned by one or more individuals resident in Canada, or a combination thereof, or

(B) a class or classes of shares of the corporation having full voting rights under all circumstances were listed on a prescribed stock exchange in Canada, and it is established in prescribed manner that no one non-resident person and no one corporation that did not comply with

clause (A) owned more than 75% of the issued and outstanding shares of the corporation having full voting rights under all circumstances, alone or in combination with any other person related to such non-resident person or such corporation at any time within the period, and a class or classes of equity shares of the corporation representing in the aggregate not less than 50% of that part of the paid-up capital of the corporation that was represented by all the issued and outstanding equity shares of the corporation were listed on a prescribed stock exchange in Canada, and it is established in prescribed manner that no one non-resident person and no one corporation that did not comply with clause (A) owned equity shares representing in the aggregate more than 75% of that part of the paid-up capital of the corporation that was represented by all the issued and outstanding equity shares of the corporation, alone or in combination with any other person related to such non-resident person or such corporation at any time within the period, and

- (iii) where the year commenced after 1964, the number of directors who were resident in Canada was not less than 25% of the total number of directors of the corporation;
- (b) the corporation complied with the conditions specified in subparagraphs (a)(i) and (iii) and was a subsidiary wholly-owned corporation subsidiary to a corporation that throughout the 60-day period complied with the conditions specified in paragraph (a) or (c); or
- (c) the corporation complied with the conditions specified in subparagraphs (a)(i) and (iii) and was a subsidiary controlled corporation
 - (i) of which equity shares representing at least 75% of that part of the paid-up capital of the corporation that is represented by all the issued and outstanding equity shares were owned by

- (A) the corporation to which it was subsidiary,
 - (B) a corporation controlled in Canada, or
 - (C) an individual resident in Canada, or
 - (D) any combination of persons described in clause (A), (B) or (C), and
- (ii) subsidiary to a corporation that throughout the 60-day period complied with the conditions specified in paragraph (a) or (b).

TAX ON NON-CANADIAN CORPORATIONS CARRYING ON BUSINESS IN CANADA

Definition

89 (1)(a) "Canadian corporation" at any time means a corporation that was resident in Canada at that time and was

- (i) incorporated in Canada, or
- (ii) resident in Canada throughout the period commencing June 18, 1971 and ending at that time

except that for the purposes of subsection 83(1) a corporation that was incorporated in Canada before April 27, 1965 and that was not resident in Canada at the end of 1971 shall be deemed not to be a Canadian corporation;

Tax Payable

219 (1) Every corporation carrying on business in Canada at any time in a taxation year (other than a corporation that was, throughout the year, a Canadian corporation) shall, on or before the day on or before which it is required to file a return of income under Part I for the year, pay a tax under this Part for the year equal to 25% of the amount by which the aggregate of

- (a) the corporation's amount taxable (within the meaning given that expression in section 123) for the taxation year,

- (a.1) the amount deducted by the corporation under section 112 in computing the amount referred to in paragraph (a),
 - (a.2) the amount deducted by the corporation under subsection 115(1) in computing the amount referred to in paragraph (a) that was an amount the deduction of which was permitted under section 112,
 - (a.3) the amount deducted by the corporation under paragraph 20(1)(v.1) in computing the amount referred to in paragraph (a),
 - (b) the amount claimed by the corporation under paragraph (h) for the immediately preceding taxation year, and
 - (c) where the corporation was resident in Canada at any time in the year, the amount claimed under paragraph (i) for the immediately preceding taxation year
- exceeds the aggregate of,
- (d) where the corporation was, throughout the year, not resident in Canada, the lesser of
 - (i) the amount, if any, by which the aggregate of amounts each of which is a taxable capital gain of the corporation for the year from a disposition of a taxable Canadian property that was not property used in the year in, or held in the year in the course of, carrying on business in Canada, exceeds the aggregate of amounts each of which is an allowable capital loss of the corporation for the year from a disposition of any such property, and
 - (ii) the amount that would be determined under subparagraph (i) for the year if it were read without reference to the expression "that was not property used in the year in, or held in the year in the course of, carrying on business in Canada",
 - (e) the tax payable by it under Part I for the year less, where the corporation was, at no time in the year, resident in Canada, that proportion thereof that the amount determined under paragraph (d) in respect of the corporation for the year is of the corporation's amount taxable for the year.

- (f) any income taxes payable by it to the government of a province in respect of the year (to the extent that such taxes were not deductible under Part I in computing its income for the year from businesses carried on by it in Canada) less, where the corporation was, at no time in the year, resident in Canada, that proportion thereof that the amount determined under paragraph (d) in respect of the corporation for the year is of the corporation's amount taxable for the year,
- (g) where the corporation was resident in Canada at any time in the year
 - (i) the amount deducted under section 126 from the tax for the year otherwise payable by the corporation under Part I, and
 - (ii) $\frac{1}{2}$ of the lesser of the corporation's taxable income for the year and the amount, if any, by which
 - (A) the aggregate of such of its incomes for the year from businesses or properties and its taxable capital gains for the year from dispositions of property as were from sources in countries other than Canadaexceeds
 - (B) the aggregate of such of its losses for the year from businesses or properties and its allowable capital losses for the year from dispositions of property as were from sources in countries other than Canada,
- (h) where the corporation was, at the end of the year, carrying on business in Canada, such amount as the corporation may claim for the year, not exceeding the amount prescribed to be its allowance for the year in respect of its investment in property in Canada,
- (i) where the corporation was resident in Canada at any time in the year, such amount as the corporation may claim for the year, not exceeding the amount, if any, by which
 - (i) the aggregate of dividends paid by it after it last became resident in Canada, while it was resident in Canada and before the end of the year

exceeds

- (ii) the aggregate of amounts determined under subparagraph (g)(ii) in respect of the corporation for taxation years ending after it last became resident in Canada and not later than the end of the year,

and

- (j) such portion of the aggregate of all amounts, each of which is an amount by which the amount referred to in paragraph (a) is increased by virtue of paragraph 12(1)(o) or 18(1)(m) or subsection 69(6) or (7), as is not deductible under paragraph (f) or (h).

Exempt Corporations

219 (2) No tax is payable under this Part for a taxation year by a corporation that was, throughout the year,

- (a) a bank,
- (b) a corporation whose principal business was
 - (i) the transportation of persons or goods,
 - (ii) communications, or
 - (iii) mining iron ore in Canada, or
- (c) a corporation exempt from tax under section 149.

Non-Resident Insurers

219 (4) No tax is payable under subsection (1) for a taxation year by a non-resident insurer, but where it elects, in prescribed manner and within the prescribed time, to deduct, in computing its Canadian investment fund as of the end of the immediately following taxation year, an amount not greater than the amount, if any, by which

- (a) the amount of its Canadian investment fund as of the end of the year

exceeds

- (b) the amount, as determined for the purposes of the relevant authority, of such of the insurer's liabilities (other than liabilities in respect of amounts payable out

of segregated funds) as of the end of the year as may reasonably be regarded to have been incurred by it in the course of carrying on its insurance businesses in Canada

it shall, on or before the day on or before which it is required to file a return under Part I for the year, pay a tax for the year equal to 25% of the amount it has so elected to deduct.

Additional Tax on Non-Resident Insurer

219 (5) In addition to any tax payable by it under subsection (4), a non-resident insurer (other than an insurer who, in the taxation year, has ceased to carry on its insurance businesses in Canada), shall, on or before the day on or before which it is required to file a return under Part I for a taxation year, pay a tax for the year equal to 25% of the amount, if any, by which

- (a) the amount of its Canadian investment fund as of the end of the year

exceeds

- (b) the greater of the value, as of the end of the year, of the Canadian assets owned by it at that time and the value, as of a time not later than the day on or before which the insurer is required to file a return under Part I for the year, of the Canadian assets owned by it at that time.

(5.1) Where in a taxation year a non-resident insurer has ceased to carry on its insurance businesses in Canada, it shall, on or before the day on or before which it is required to file a return under Part I for the year, pay a tax for the year equal to 25% of the amount, if any, by which

- (a) its surplus funds derived from operations (within the meaning given that expression in paragraph 138(12)(o)) as of the end of the year

exceeds the aggregate of

- (b) each amount that the insurer has elected under subsection (4) to deduct in computing its Canadian investment fund for the taxation year (within the

meaning given that expression in subsection 138(14)) or for any previous taxation year, or on which the insurer has paid tax under subsection (5) or (6) for any such previous year,

- (c) the amount, if any, by which the insurer's accumulated 1968 deficit (within the meaning given that expression in paragraph 138 (12)(a)) exceeds the amount of the insurer's maximum tax actuarial reserves (within the meaning given that expression in paragraph 138(12)(h)) for its 1968 taxation year for its life insurance policies in Canada, and
- (d) the insurer's loss, if any, for each of its five consecutive taxation years ending with its 1968 taxation year, from all insurance businesses (other than its life insurance business) carried on by it in Canada, except to the extent that any such loss was deductible in computing its taxable income for any of its taxation years ending before 1969.

Where Election under ss. 138(9)

219 (6) Where a non-resident insurer (other than an insurer who, in the taxation year, has ceased to carry on its insurance businesses in Canada), has made an election under subsection 138(9) in respect of a taxation year, no tax is payable by it under subsection (4) or (5) for the year or the immediately preceding taxation year but the insurer shall, on or before the day on or before which it is required to file a return under Part I for the year, pay a tax for the year equal to 25% of the amount, if any, by which the amount that would, if the insurer had not so elected, be the insurer's Canadian investment fund as of the end of the year exceeds the value, as of the end of the year, of property of the insurer used by it in the year in, or held by it in the year in the course of carrying on its insurance businesses in Canada.

Source: "An Act to Amend the Income Tax Act", Statutes of Canada, 1970-71-72, Chapter 63, Queen's Printer, Ottawa.

"An Act to Amend the Statute Law Relating to Income Tax", Statutes of Canada 1973-74, Chapter 14, Queen's Printer, Ottawa.

"An Act to Amend the Statute Law Relating to Income Tax", Statutes of Canada, 1974-75-76, Chapters 26 and 106, Queen's Printer, Ottawa.

"An Act to Amend the Statute Law Relating to Income Tax", The Canada Gazette, Part III, February 24, 1977; Queen's Printer, Ottawa.

Part II

TRANSPORTATION

THE AERONAUTICS ACT

R.S.C. 1970, c. A-3

The Aeronautics Act requires the Minister of Transport to supervise all matters connected with aeronautics. The Minister may, with the approval of the Governor in Council, make regulations to control and regulate air navigation over Canada and its territorial waters.

No person may fly an aircraft in Canada unless it is registered under the Aeronautics Act, or under the laws of other specified countries with whom Canada has entered into an agreement related to interstate flying.

Regulations (SOR/61-10, P.C. 1960-1775) made under the Aeronautics Act impose certain restrictions pertaining to the registration of aircraft.

An aircraft other than a state aircraft cannot be registered under the Aeronautics Act unless it is owned exclusively by a qualified person. Those who are qualified for this purpose are:

- Canadian citizens;
- a person lawfully admitted to Canada for permanent residence;
- companies incorporated in Canada at least two-thirds of whose directors are Canadian citizens.

Where a Canadian private aircraft is concerned, there are two additional classes of persons that can qualify as registered owners, namely:

- citizens or subjects of other specified countries who normally reside in Canada;
- companies incorporated in Canada.

Aircrafts owned by these two classes of people can be operated outside Canada only for limited periods of time.

AERONAUTICS ACT

REGULATIONS MADE UNDER THE AERONAUTICS ACT

200 No person shall fly an aircraft in Canada unless it is registered

- (a) under this Part, or
- (b) under the laws of a contracting state or a state that is party to an agreement entered into with Canada relating to interstate flying.

204 (1) No aircraft shall be registered under this Part unless,

- (a) it is state aircraft or is owned exclusively by a person qualified under subsection (2) to be the registered owner of a Canadian aircraft;
- (b) there is in force in respect of the aircraft a certificate of airworthiness or a flight permit issued under this Part;
- (c) all duties due and payable under the laws of Canada in respect of the importation of the aircraft into Canada have been paid; and
- (d) the aircraft is not registered elsewhere than in Canada.

204 (2) For the purpose of paragraph (a) of subsection (1), a person is qualified to be the registered owner of a Canadian aircraft who is

- (a) a Canadian citizen,
- (b) a person, lawfully admitted to Canada for permanent residence who, since being so admitted, has been ordinarily resident in Canada for a period of not more than six years,
- (c) a corporation incorporated under the laws of Canada or any province, at least two-thirds of the directors of which are Canadian citizens, or
- (d) in the case of a private aircraft,
 - (i) a citizen or subject of a contracting state who normally resides in Canada, or
 - (ii) a corporation incorporated under the laws of Canada or a province.

208 (1) Where a Canadian aircraft that is a private aircraft is owned by other than a Canadian citizen or a corporation mentioned in paragraph (c) of subsection (2) of section 204, it shall not be operated outside Canada except in accordance with subsection (2).

208 (2) An aircraft described in subsection (1) may be operated outside Canada if

- (a) each period of absence of the aircraft from Canada does not exceed sixty days; and
- (b) the aggregate periods of absence of the aircraft from Canada do not exceed six months in any twelve-month period.

208 (57) "private aircraft" means a civil aircraft other than a commercial aircraft or a state aircraft;

Source: "Aeronautics Act, Air Regulations", The Canada Gazette, Part II, Vol. 95, No. 1, SOR/61-10, P.C. 1960-1775, Pages 43-44.

Part III

COMMUNICATIONS

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION ACT

S.C. 1974-75-76, c. 49

The Canadian Radio-Television and Telecommunications Commission has been established under the auspices of the Canadian Radio-Television and Telecommunications Act and has taken over all of the responsibilities previously discharged by the Canadian Radio-Television Commission. The Commission consists of nine full-time members and not more than 10 part-time members. All members of the Commission must be Canadian citizens ordinarily resident in Canada.

BROADCASTING ACT

R.S.C. 1970, c. B-11

The Broadcasting Act sets out Canada's broadcasting Policy which is aimed at ensuring that the Canadian broadcasting system be effectively owned and controlled by Canadians.

DIRECTION TO THE CANADIAN RADIO-
TELEVISION COMMISSION PURSUANT TO
SECTION 27 OF THE BROADCASTING ACT

SOR/69-590 P.C. 1969-2229

SOR/71-33 P.C. 1971-37

SOR/75-102 P.C. 1975-342

A licence to operate a broadcasting station, or permission to operate a network of broadcasting stations, can only be granted to a Canadian citizen; or to a Canadian corporation of which the Chairman and each of the directors are Canadian citizens and of which four-fifths of the shares are owned either by Canadian citizens or by Canadian-controlled corporations. An exception may be allowed in the case of an application for the renewal of a broadcasting licence that was outstanding on April 1, 1968, providing the Commission is satisfied that granting a renewal would not run contrary to public interest and providing the Governor in Council, by order, approves such a renewal.

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION ACT

Commission Established

3 (1) There shall be a Commission to be known as the Canadian Radio-Television and Telecommunications Commission consisting of not more than nine full-time members and not more than ten part-time members to be appointed by the Governor in Council.

Qualifications of Commission Members

5 (1) A person is not eligible to be appointed or to continue as a member of the Commission if he is not a Canadian citizen ordinarily resident in Canada or if, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, he

(a) is engaged in a telecommunications undertaking; or

(b) has any pecuniary or proprietary interest in

(i) a telecommunications undertaking, or

(ii) the manufacture or distribution of telecommunication apparatus except where such distribution is incidental to the general merchandising of goods by wholesale or retail.

Duties and Powers of the Commission

15 (3) Whenever under any order, rule or regulation or any contract, lease or other document, any power, duty or function is vested in or exercisable by the Canadian Radio-Television Commission, the Chairman or any other member thereof or any other officer thereof, that power, duty or function is vested in and shall or may be exercised or performed by the Canadian Radio-Television and Telecommunications Commission, the Chairman or other member or officer thereof, unless the Governor in Council by order designates a Minister of the Crown or a person holding the rank of deputy head as defined in the Public Service Employment Act to exercise or perform any such power, duty or function.

Source: "The Canadian Radio-Television and Telecommunications Commission Act", S.C. 1974-75-76, c. 49.

BROADCASTING ACT

Broadcasting Policy for Canada

3 (b) The Canadian broadcasting system should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada.

Licences

22 (1) No broadcasting licence shall be issued, amended or renewed pursuant to this part

(a) in contravention of any direction to the Commission issued by the Governor in Council under the authority of this Act respecting

(iii) the classes of applicants to whom broadcasting licences may not be issued or to whom amendments or renewals thereof may not be granted ...

Directions by the Governor in Council

27 (1) The Governor in Council may by order from time to time issue directions to the Commission as provided for by subsection 18 (2) and paragraph (22) (1) (a).

Source: "The Broadcasting Act", Revised Statutes of Canada 1970, Chapter B-11, Queen's Printer, Ottawa, 1970.

DIRECTION TO THE CANADIAN RADIO-TELEVISION COMMISSION

PURSUANT TO SECTION 27 OF THE BROADCASTING ACT

Restrictions on Licence Issue and Renewal

1 The Canadian Radio-Television Commission is hereby directed that on and after the twelfth day of January, 1971 broadcasting licences may not be issued and renewals of broadcasting licences may not be granted to applicants of the classes described in paragraph 2.

Restricted Classes

2 The classes referred to in paragraph 1 are as follows:

- (a) persons who are not Canadian citizens or eligible Canadian corporations; and
- (b) governments of countries other than Canada or of political subdivisions of countries other than Canada and agents of such governments.

Eligible Canadian Corporation

4 For the purposes of this direction, an "eligible Canadian corporation" is a corporation

- (a) that is incorporated under the laws of Canada or a province;
- (b) of which the chairman or other presiding officer and each of the directors or other similar officers are Canadian citizens; and
- (c) of which, if it is a corporation having share capital, at least four-fifths of the shares having full voting rights under all circumstances, and shares representing in the aggregate at least four-fifths of the paid-up capital, are beneficially owned by Canadian citizens or by corporations other than corporations that are controlled directly or indirectly by citizens or subjects of a country other than Canada;

except that, in any case where in the opinion of the Commission, notwithstanding that the corporation is one to which subparagraphs (a), (b) and (c) apply, the corporation is effectively owned or controlled either directly or indirectly and either through the holding of shares of the corporation or any other corporation or through the holding of a significant portion of the outstanding debt of the corporation or in any

other manner whatever, by or on behalf of any person, body or authority of a class described in paragraph 2, the corporation shall be deemed not to be an eligible Canadian corporation.

4 (1) Notwithstanding section 4, a corporation that is

- (a) one to which paragraphs 4 (a) to (c) apply, and
- (b) in the opinion of the Commission effectively owned or controlled by a corporation to which 4 (a) and (c) apply but paragraph 4 (b) does not,

shall for the purposes of this Direction be deemed to be an eligible corporation if

- (c) at least four-fifths of the directors or other similar officers of the owning or controlling corporation including the chairman or other presiding officer are Canadian citizens, and
- (d) the Commission is satisfied that it would not be contrary to the public interest to grant a broadcasting licence or the renewal of a broadcasting licence to that corporation.

Presumption re Individual Shareholders with Canadian Addresses

5 With respect to any shares of a corporation of a particular class that, according to the relevant records that the corporation is required to keep under the law of the place of its incorporation, are held by individuals each of whom holds one per cent or less of the total number of issued shares of the corporation of that class, the Commission may, in the absence of any evidence to the contrary, accept as evidence that such shares are beneficially owned by Canadian citizens, a statement signed by the president, secretary or treasurer of the corporation, or by any other officer or person thereunto duly authorized by the board of directors or other governing body of the corporation, indicating

- (a) that according to those records the individuals who hold the shares are individuals having addresses in Canada, and
- (b) that the person by whom the statement is signed has no knowledge or reason to believe that the shares are not beneficially owned by Canadian citizens.

Applications Outstanding on April 1, 1968

6 An applicant for the renewal of a broadcasting licence that was outstanding on the 1st day of April, 1968 to whom, but for this paragraph, such renewal may not be granted by virtue of this direction shall be deemed, for the purposes of that application only, not to be an applicant of a class described in paragraph 2 if

- (a) the Commission is satisfied that it would not be contrary to the public interest to grant the renewal applied for by the applicant; and
- (b) the Governor in Council, by order, approves of the grant of the renewal after submission to him by the Commission of the application, together with a statement of the Commission's reasons why it is satisfied that it would not be contrary to the public interest to grant the renewal.

Power of Governor in Council and C.R.T.C. re Licences and Renewals

7 Nothing in this direction shall be construed as limiting

- (a) the power of the Governor in Council to direct that amendments of broadcasting licences may not be granted to applicants of a class described in paragraph 2 or that broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of classes other than a class described in paragraph 2, or
- (b) the power of the Canadian Radio-Television Commission, in carrying out its objects, to refuse to grant an amendment of a broadcasting licence to an applicant of a class described in paragraph 2, or to refuse to issue a broadcasting licence to or to grant an amendment or renewal of a broadcasting licence to an applicant of a class other than a class described in paragraph 2.

Source: "Broadcasting Act, Direction to the Canadian Radio-Television Commission", The Canada Gazette, Part II, Vol. 103, No. 23, SOR/69-590, P.C. 1969-2229, p. 1695, Queen's Printer, Ottawa, 1969.

"Broadcasting Act, Direction to the Canadian Radio-Television Commission", The Canada Gazette, Part II, Vol. 105, No. 2, SOR/71-33, P.C. 1971-37, Queen's Printer, Ottawa, 1971.

"Broadcasting Act, Direction to the Radio-Television Commission, Amendment", The Canada Gazette, Part II, Vol. 109, No. 5, SOR/75-102, P.C. 1975-342, p. 356, Queen's Printer, Ottawa, 1975.

Part IV
FINANCIAL INSTITUTIONS

THE BANK ACT

R.S.C. 1970, c. B-1

Directors

The Bank Act stipulates that at least three-quarters of the directors of a chartered bank must be Canadian citizens ordinarily resident in Canada.

Limits on Shares Held by Non-Residents

The Bank Act sets limits on the proportion of shares of capital stock of chartered banks that can be held by non-residents. The general restrictions are as follows:

- (i) Where non-residents hold less than 25 percent of the issued and outstanding shares of a chartered bank, the proportion of shares held by non-residents can increase to 25 percent. If non-resident shareholdings account for 25 percent or more of the issued and outstanding shares, no increase is allowed.
- (ii) The number of shares held by a single person (resident or non-resident) cannot be increased if the increase would give that person, or that person and his associates, more than 10 percent of the issued and outstanding shares. If the shares held by a single person, together with those held by his associates, already equal or exceed 10 percent of the issued shares, the percentage cannot be increased.
- (iii) The government of a foreign state, or an agent thereof, is prohibited from acquiring the shares of a chartered bank.

Voting Restrictions

When a resident holds shares on behalf of a non-resident he is not entitled to exercise the voting rights associated with those shares.

Decennial Review

The Bank Act confers powers on Canada's chartered banks for a ten-year period. These powers were scheduled to expire on June 30, 1977 but have been extended to March 1978.

As part of the current decennial review, a White Paper outlining proposed legislative changes to the Bank Act was issued in August, 1976. Its purpose was to generate public discussion on the proposed changes which were largely designed to encourage more competition in Canada's financial system. One of the most significant proposals would permit foreign bank subsidiaries to operate in Canada as banks provided certain conditions are met regarding their growth and size.

BANK ACT

Qualification of Provisional Directors

10 (4) At least three-quarters of the provisional directors shall be Canadian citizens ordinarily resident in Canada 1966-67, c. 87, s. 10.

Qualification of Directors

18 (3) At least three-quarters of the directors shall be Canadian citizens ordinarily resident in Canada.

18 (4) The election or appointment of any person as a director is void if the composition of the board of directors would as a result thereof fail to comply with subsection (3).

Disqualification of Directors

20 (2) A director ceases to be a director if

- (b) he ceases to be a Canadian citizen ordinarily resident in Canada and as a result thereof the composition of the board of directors ceases to comply with subsection 18 (3). 1966-67, c. 87, s. 20.

Definition of Non-Resident

52 (1) In this section and sections 53 to 57 "non-resident" means

- (a) an individual who is not ordinarily resident in Canada,
- (b) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada,
- (c) the government of a foreign state or any political subdivision thereof, or an agent of either,
- (d) a corporation that is controlled directly or indirectly by non-residents as defined in any of paragraphs (a) to (c),
- (e) a trust
 - (i) established by a non-resident as defined in any of paragraphs (b) to (d) other than a trust for the administration of a pension fund for the benefit of individuals a majority of whom are residents, or

- (ii) in which non-residents as defined in any of paragraphs (a) to (d) have more than fifty percent of the beneficial interest, or
- (f) a corporation that is controlled directly or indirectly by a trust defined in paragraph (e) as a non-resident.

Shares Held Jointly

52 (4) For the purposes of sections 53 to 57, where a share of the capital stock of the bank is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident.

Change of Status of Resident Corporation or Trust

52 (5) Where after the 30th day of April 1967 a corporation or trust that was at any time a resident becomes a non-resident, any shares of the capital stock of the bank acquired by the corporation or the trust while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 53 and 54, to be shares held by a resident for the use or benefit of a non-resident.

Limit on Shares Held by Non-Residents

53 (1) The bank shall refuse to allow a transfer of a share of the capital stock of the bank to a non-resident to be made or recorded in a register of transfers of the bank

- (a) if, when the total number of shares of the capital stock of the bank held by non-residents exceeds twenty-five percent of the total number of the issued and outstanding shares of such stock, the transfer would increase the percentage of such shares held by non-residents; or
- (b) if, when the total number of shares of the capital stock of the bank held by non-residents is twenty-five percent or less of the total number of the issued and outstanding shares of such stock, the transfer would cause the total number of such shares held by non-residents to exceed twenty-five percent of the total number of the issued and outstanding shares of such stock.

53 (2) The bank shall refuse to allow a transfer of a share of the capital stock of the bank of any person...

- (a) if, when the total number of shares of the capital stock of the bank held by such person and by other shareholders associated with him, if any, exceeds ten percent of the total number of the issued and

outstanding shares of such stock, the transfer would increase the percentage of such shares held by such person or by other shareholders associated with him, if any; or

- (b) if, when the total number of shares of the capital stock of the bank held by such person and by other shareholders associated with him, if any, is ten percent or less of the total number of the issued and outstanding shares of such stock, the transfer would cause the total number of such shares held by such person and by other shareholders associated with him, if any, to exceed ten percent of the issued and outstanding shares of such stock.

No Shares To Be Transferred to a Government

53 (3) The bank shall refuse to allow a transfer of a share of the capital stock of the bank to

- (b) the government of a foreign state or any political subdivision thereof or an agent of the government of a foreign state or any political subdivision thereof,

to be made or recorded in a register of transfers of the bank.

53 (4) The bank shall not accept a subscription for a share of the capital stock of the bank

- (a) ...by the government of a foreign state or any political subdivision thereof or an agent of the government of a foreign state or any political subdivision thereof,

Voting by Resident Nominees for Non-Residents Prohibited

54 (1) Notwithstanding section 31, and except as provided in section 56, where a resident holds shares of the capital stock of the bank in the right of, or for the use or benefit of, a non-resident, the resident shall not, in person or by proxy, exercise the voting rights pertaining to those shares.

Computing Non-Resident Holdings

55 (4) Where for any of the purposes of section 43, the bank requires that the total number of shares of the capital stock of the bank held by non-residents be established, the bank may calculate the total number of such shares held by non-residents to be the total of

- (a) the number of shares held by all shareholders whose recorded addresses are places outside Canada; and
- (b) the number of shares held by all shareholders each of whose aggregate individual holdings of such shares has a par value of more than five thousand dollars and whose recorded addresses are places within Canada but who to the knowledge of the bank are non-residents;

and such calculation may be made as of a date not earlier than the 1st day of May, 1967, or four months before the day on which the calculation is made, whichever is the later date.

Limiting Share Transfers

55 (5) Where by any calculation made under subsection (4) the total number of shares held by non-residents is under twenty-five percent of the total issued and outstanding shares of the capital stock of the bank, the number of shares the transfer of which by residents to non-residents the bank may allow to be made or recorded in the registers of transfers of the bank shall be so limited as not to increase the total number of shares held by non-residents to more than twenty-five percent of the total issued and outstanding shares of the capital stock of the bank.

Definitions

56 (1) In this section

"associates of the non-resident" means, with reference to any particular day,

- (a) any shareholders associated with the non-resident on that day, and
- (b) any persons who would, under subsection 52 (2), be deemed to be shareholders associated with the non-resident on that day if both he and such persons were shareholders;

"prescribed day" means the 17th day of February, 1965;

"shares held by or for the non-resident and associates" means, with reference to any particular day, the aggregate number of shares held on that day in the name or right of or for the use or benefit of the non-resident and associates of the non-resident on that day;

Non-Resident Ownership of Bank

56 (2) Where more than twenty-five percent of the issued and outstanding shares of the capital stock of the bank were held on the 22nd day of September, 1964 in the name or right of or for the use or benefit of any one non-resident, the bank, so long as the total number of shares of the capital stock of the bank held by non-residents exceeds twenty-five percent of the total number of issued and outstanding shares of the capital stock of the bank,

- (a) shall refuse to allow a transfer of a share of the capital stock of the bank to a non-resident to be made or recorded in a register of transfers of the bank unless the transfer is from a non-resident to any associates of the non-residents; and
- (b) shall not accept a subscription for a share of the capital stock of the bank by a non-resident;

but if at any time after the 22nd day of September, 1964 there is no one person in whose name or right or for whose use or benefit more than ten per cent of the issued and outstanding shares of the capital stock of the bank are held, this subsection ceases thereafter to have any force or effect.

Exception for Individual Non-Resident and Associate Holdings

56 (4) Where on the 22nd day of September, 1964 the number of shares of the capital stock of the bank held in the name or right of or for the use or benefit of a non-resident together with the number of such shares, if any, held on that day in the name or right of or for the use or benefit of any associates of the non-resident exceeded ten percent of the number of shares of the capital stock of the bank at that time issued and outstanding, the voting rights pertaining to the shares held in the name or right of or for the use or benefit of the non-resident may, notwithstanding subsection 54 (2), be exercised, in person or by proxy, so long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates on the 22nd day of September, 1964 or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 54 does not apply.

Shares Transfer to Foreign State

56 (5) Notwithstanding subsections 53 (2) and (3), the bank may allow a transfer of a share of the capital stock of the bank to be made or recorded in a register of transfers of the bank where the transfer is to

- (b) the government of a foreign state or any political subdivision thereof or an agent of the government of a foreign state or any political subdivision thereof,...

if it is shown to the bank on evidence satisfactory to it that the share was at the commencement of the prescribed day held in the right of or for the use or benefit of the transferee.

Share Transfers to Non-Residents Between September 22, 1964 and May 1, 1967

56 (6) If, at any time after the 22nd day of September, 1964 and before the first day of May, 1967, the bank allowed to be made or recorded in a register of transfers of the bank a transfer of any share of the capital stock of the bank to a non-resident that it would have been required to refuse under section 53 had that section come into force on the 23rd day of September, 1964, no person shall, in person or as proxy, exercise the voting rights pertaining to such share until such time as the share is transferred to a resident, unless

- (a) the total par value of all shares of the capital stock of the bank held by the non-resident is not more than five thousand dollars, or
- (b) the percentage of the shares of the capital stock of the bank held by non-residents on the 1st day of May, 1967 does not exceed
 - (i) twenty-five percent, or
 - (ii) the percentage of such shares held by non-residents on the 22nd day of September, 1964 if such percentage was on that day greater than twenty-five percent,

and the total number of such shares held by or for the non-resident and associates does not exceed ten percent of the total number of the issued and outstanding shares of the capital stock of the bank;

but nothing in this subsection shall be construed to permit any person to exercise the voting rights pertaining to a share of the capital stock of the bank that is held in the name of the government of a foreign state or any political subdivision thereof or an agent of the government of a foreign state or any political subdivision thereof, if the transfer of the share to the holder was made or recorded in a register of transfers of the bank on or after the prescribed day.

Calculation of Non-Resident Shareholders

56 (8) For the purposes of subsection (6), the total number of shares of the capital stock of the bank held by non-residents on the 22nd day of September, 1964, or on any day thereafter to and including the 1st day of May, 1967, may be calculated, in respect of any of those days, in the same manner as the total number of such shares may be calculated under subsection 55 (4). 1966-67, c. 87, s. 56.

Source: "The Bank Act", Revised Statutes of Canada, 1970, Chapter B-1, Queen's Printer, Ottawa, 1970.

THE CANADIAN AND BRITISH INSURANCE COMPANIES ACT

R.S.C. 1970, c. I-15
R.S.C. 1970, 1st Supp., c. 19

The Canadian and British Insurance Companies Act was enacted in recognition of a need to ensure that federally incorporated insurance companies are able to discharge their liabilities to policyholders in Canada.

The provisions of the Act that affect foreign investment in Canada are summarized below. Their effect is to prevent the takeover of Canadian-controlled life insurance companies by non-residents, to permit non-residents to retain an existing degree of control, and to permit non-residents to establish new life insurance companies without restrictions on share ownership.

Directors

The majority of the directors of a federally incorporated insurance company must be Canadian citizens ordinarily resident in Canada.

Limits on Shares Held by Non-Residents

The Canadian and British Insurance Companies Act sets limits on the proportion of shares of capital stock of life insurance companies that can be held by non-residents. The general restrictions are as follows:

- (i) Where non-residents hold less than 25 percent of the issued and outstanding shares of a life insurance company, the proportion of shares held by non-residents can increase to 25 percent. If non-resident shareholdings account for 25 percent or more of the issued and outstanding shares, no increase is allowed.
- (ii) The number of shares held by a single non-resident cannot be increased if the increase would give that non-resident, or that person and his associates, more than 10 percent of the issued and outstanding shares. If the shares held by a single non-resident, together with those held by his associates, already equal or exceed 10 percent of the issued shares, the percentage cannot be increased.

The restrictions on the proportion of shares of a life insurance company that can be held by non-residents do not apply when a new company is being established. They come into force on the day following the first general meeting of shareholders.

Where one non-resident held more than 50 per cent of the shares of a life insurance company on the prescribed day, there is no upper limit to the proportion of shares which may be held by non-residents. The prescribed day with certain exceptions is September 23, 1964, or the date of the first general meeting of the shareholders if the company was incorporated after that date. However, if at any time after the prescribed day no single non-resident holds more than 50 per cent of the shares then the general limitations on non-resident shareholdings will apply.

Non-Resident Voting Restrictions

When a resident holds shares of a life insurance company on behalf of a non-resident he is not entitled to exercise the voting rights associated with those shares.

When the shares held by or on behalf of a non-resident, together with the shares held by or on behalf of the associates of that non-resident, exceed 10 per cent of the issued shares, the voting rights associated with the non-resident's shares may not be exercised. An exception applies when the number of shares held in the name or right of a non-resident and his associates exceed 10 per cent of the issued shares on the prescribed day. In this case the voting rights associated with the non-resident's shares may be exercised so long as the holdings of the non-resident and his associates at the time of the vote do not exceed the percentage held on the prescribed day or any lower percentage held subsequent to the prescribed day.

Definitions

2 (1) In this Act,

"business of insurance" means the making of any contract of insurance, and includes any act or acts of inducement to enter into such a contract, and any act or acts relating to the performance thereof, or the rendering of any service in connection therewith;

"company" means any corporation incorporated under the laws of Canada or of the former Province of Canada, for the purpose of carrying on the business of insurance, and includes "fraternal benefit society" as defined by this Act;

Directors

6 (4) A majority of all the directors of the company, and, in the case of a company having more than one class of directors, of the ordinary directors or shareholders' directors, as the case may be, of the company, shall at all times be Canadian citizens ordinarily resident in Canada.

6 (5) The election or appointment of a person as a director is void if the composition of the Board of Directors as a result thereof fails to comply with the requirements of subsection (4) and a director ceases to be a director if he ceases to be a Canadian citizen ordinarily resident in Canada and the composition of the board as a result thereof ceases to comply with the requirements of subsection (4).

Share Transfers and Directors' Powers

17 (1) The directors of a company registered to transact the business of life insurance may allow or refuse to allow the entry in any such book or books, of any transfer of stock that would, in the opinion of the directors, result in that stock being held in the name or right of, or for the use or benefit of,

- (a) a person who is not a Canadian citizen ordinarily resident in Canada,
- (b) a corporation, association, partnership or other organization incorporated, formed or otherwise organized elsewhere than in Canada, or
- (c) a corporation, association, partnership or other organization that, in the opinion of the directors, is controlled, whether directly or indirectly and whether

through holding a majority of the shares thereof or other voting interest therein or in any other manner whatever, by persons who are not Canadian citizens ordinarily resident in Canada.

17 (2) Subsection (1) does not apply to permit the directors of a company registered to transact the business of life insurance to refuse to allow the entry in any such book or books, of any transfer of stock held in the name or right of, or for the use or benefit of, any person, corporation, association, partnership or organizations mentioned in paragraph (1) (a), (b) or (c). 1957-58, c. 11, s. 3.

Definitions

18 (1) In this section and sections 19 to 22,

"non-resident" means

- (a) an individual who is not ordinarily resident in Canada,
- (b) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada,
- (c) a corporation that is controlled directly or indirectly by non-residents as defined in paragraph (a) or (b),
- (d) a trust established by a non-resident as defined in paragraph (a), (b), or (c), or a trust in which non-residents as so defined have more than fifty per cent of the beneficial interest, or
- (e) a corporation that is controlled directly or indirectly by a trust mentioned in paragraph (d);

Shares Held Jointly

18 (3) For the purposes of sections 19 to 22, where a share of the capital stock of a life company is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident. 1964-65, c. 40, s. 3.

Limit on Shares Held by Non-Residents

19 (1) The directors of a life company shall refuse to allow in the book or books referred to in section 15 the entry of a transfer of any share of the capital stock of the company to a non resident

- (a) if, when the total number of shares of the capital stock of the company held by non-residents exceeds twenty-five per cent of the total number of issued and outstanding shares of such stock, the entry of the transfer would increase the percentage of such shares held by non-residents;
- (b) if, when the total number of shares of the capital stock of the company held by non-residents is twenty-five per cent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the total number of such shares of stock held by non-residents to exceed twenty-five per cent of the total number of issued and outstanding shares of such stock;
- (c) if, when the total number of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, exceeds ten per cent of the total number of issued and outstanding shares of such stock, the entry of the transfer would increase the percentage of such shares held by the non-resident and by other shareholders associated with him, if any; or
- (d) if, when the total number of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, is ten per cent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the number of such shares of stock held by the non-resident and by other shareholders associated with him, if any, to exceed ten per cent of the issued and outstanding shares of such stock.

Allotment to Non-Resident

19 (2) The directors of a life company shall not, after the day of commencement of the first general meeting of the shareholders of the company, allot, or allow the allotment of, any shares of the capital stock of the company to any non-resident in circumstances where, if the allotment to such non-resident were a transfer of those shares, the entry thereof in such book or books would be required, under subsection (1), to be refused by the directors.

Penalty

19 (3) Default in complying with the provisions of this section does not affect the validity of a transfer or allotment of a share of the capital stock of the life company that has been entered in such book or books, but every director who knowingly authorizes or permits such default is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both. 1964-65, c. 40, s. 3.

Voting Rights of Nominees

20 (1) Where a resident holds shares of the capital stock of a life company in the right of, or for the use or benefit of, a non-resident, the resident shall not, either in person or by proxy, exercise the voting rights pertaining to those shares.

Voting Rights of Non-Residents

20 (2) Subject to subsection 22 (3), where any shares of the capital stock of a life company are held in the name or right of or for the use or benefit of a non-resident, no person shall, either as proxy or in person, exercise the voting rights pertaining to such shares held by the non-resident or in his right or for his use or benefit, if the total of such shares so held, together with such shares held in the name or right of or for the use or benefit of

- (a) any shareholders associated with the non-resident, or
- (b) any persons who would, under subsection 18 (2), be deemed to be shareholders associated with the non-resident were such persons and the non-resident themselves shareholders,

exceed in number ten per cent of the issued and outstanding shares of such stock.

Penalty

20 (3) Every person who knowingly contravenes a provision of this section is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

Definitions

22 (1) In this section

"associates of the non-resident" means, with reference to any particular day,

- (a) any shareholders associated with the non-resident on that day, and
- (b) any persons who would, under subsection 18 (2), be deemed to be shareholders associated with the non-resident on that day were such persons and the non-resident themselves shareholders;

"prescribed day" means

- (a) the 23rd day of September 1964, in the case of a life company that was a life company on that date,
- (b) the date of commencement of the first general meeting of the shareholders of the company, in the case of a company incorporated after the 23rd day of September 1964,
- (c) the date that a company becomes registered to transact the business of life insurance, in the case of a company incorporated before the 23rd day of September 1964, but not so registered on that date, and
- (d) the date of the issue of letters patent pursuant to section 4.5, in the case of a corporation continued as a corporation pursuant to that section;

"shares held by or for the non-resident and associates" means, with reference to any particular day, the aggregate number of shares held on that day in the name or right of or for the use or benefit of the non-resident and associates of the non-resident on that day.

Exception for Non-Resident Ownership of Company

22 (2) Where more than fifty per cent of the issued and outstanding shares of the capital stock of a life company are held in the name or right of or for the use or benefit of one non-resident at the commencement of the prescribed day, sections 19 to 21 do not apply to or in respect of that company; but if at any time thereafter there is no one non-resident in whose name or right or for whose use or benefit more than fifty per cent of the issued and outstanding shares of the capital stock of the life company are held, those sections apply from and after that time to and in respect of that company.

Exception for Individual Non-Resident

22 (3) Where at the commencement of the prescribed day the number of shares of the capital stock of a life company held in the name of right of or for the use or benefit of a non-resident together with the number of such shares, if any, held at the commencement of that day in the name or right of or for the use or benefit of any associates of the non-resident exceed ten per cent of the number of shares of such stock at that time issued and outstanding, the voting rights pertaining to the shares held in the name or right of or for the use or benefit of the non-resident may notwithstanding subsection 20 (2) be exercised, in person or by proxy, so long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 20 does not apply.

Change of Status of Corporate Resident

22 (4) Where after the 17th day of March 1965 a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of a life company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 19 and 20, to be shares held by a resident for the use or benefit of a non resident.

Stock Splits

22 (5) Where on or after the prescribed day the par value of shares of the capital stock of a life company is reduced, the directors of the life company may, notwithstanding subsection 19 (2), allot shares of the capital stock of the life company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.

Transferring Beneficial Holding

22 (6) The directors of a life company may, notwithstanding section 19, allow in the book or books referred to in section 15 the entry of a transfer of any share of the capital stock of the company from a resident to a non-resident where it is shown to the directors on evidence satisfactory to them that the share was at the commencement of the prescribed day held by the resident in the right of or for the use of or benefit of the non-resident.

Entry After Prescribed Day

22 (7) If at any time on or after the prescribed day and before the 18th day of March 1965 the directors of a life company allow, in the book or books referred to in section 15, the entry of any transfer or allotment of any share of the capital stock of the company to a non-resident that they would have been required to refuse or prevent under section 19 had that section come into force on the prescribed day, no person shall, as proxy or in person, exercise the voting rights pertaining to such share so long as the share is held in the name or right of or for the use or benefit of any non-resident.

Conclusions Reached by Directors re Resident or Non-Resident Status

22 (9) In determining for the purposes of this section and sections 18 to 21 whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of a life company may rely upon any statements made in any declarations submitted under section 21 or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge. 1964-65, c. 40, s. 3.

Source: "Canadian and British Insurance Companies Act", Revised Statutes of Canada, 1970, Chapter I-15, Queen's Printer, Ottawa, 1970.

"Canadian and British Insurance Companies Act", Revised Statutes of Canada, 1970, 1st Supplement, Chapter 19, Queen's Printer, Ottawa, 1970.

FOREIGN INSURANCE COMPANIES ACT

R.S.C. 1970, c. I-16
R.S.C. 1970, 1st Supp., c. 20
S.C. 1976-77, c. 39

To conduct insurance business in Canada any company incorporated under the laws of a foreign country must be registered in Canada. Such insurance companies, under the provisions of the Foreign Insurance Companies Act, must maintain assets in Canada under the control of a Canadian trustee or the Receiver General of Canada that are at least equal in amount to the company's liabilities in Canada, including its liabilities in respect of outstanding unmatured policies in Canada.

FOREIGN INSURANCE COMPANIES ACT

Preamble

WHEREAS the Parliament of Canada has jurisdiction, by properly framed legislation, to prohibit aliens, whether natural persons or foreign companies, from carrying on the business of insurance in Canada without a licence; and

WHEREAS certain sections of the Insurance Act, chapter 101 of the Revised Statutes of Canada, 1927, requiring foreign insurance companies to obtain a licence as a condition of carrying on business in Canada, have been declared, in view of their relation to other provisions of the said Act, to be not properly framed and, therefore, unconstitutional; and

WHEREAS foreign insurance companies are soliciting applications for and issuing life insurance policies as protection and long term investments of the savings of their policy-holders in Canada, and such companies now have outstanding more than four million four hundred thousand policies in Canada to an aggregate amount of more than two billions of dollars; and

WHEREAS foreign insurance companies, associations and exchanges now have insurance in force against the destruction of property in Canada by fire to an amount of more than four and a quarter billions of dollars, and insurance providing for the payment of large sums dependent on other contingencies; and

WHEREAS such insurance constitutes an important factor in the international trade and commercial relations of Canada; and

WHEREAS certain foreign insurance companies and exchanges have in times past become insolvent while carrying on business in Canada, and the policyholders in Canada thereof would have sustained serious losses but for provisions in the then existing legislation that required such companies and exchanges to deposit assets in Canada as security for their liabilities in Canada, and to make returns as to their business and financial standing, and to submit to inspection by representatives of the Government; and

WHEREAS foreign insurance companies, associations and exchanges, transacting the business of insurance throughout Canada, receive each year from policyholders in Canada many millions of dollars in premiums, and incur liabilities to such policyholders requiring involved actuarial and other computations for their determination, and the ability or inability of such companies, associations and exchanges to discharge such liabilities, as they become due, is dependent upon the character and value of their assets available for such purpose; and

WHEREAS it is contrary to the public interest that such foreign insurance companies, associations and exchanges that are unable to discharge their liabilities to policyholders in Canada as they become due, or are otherwise insolvent, should be permitted to carry on the business of insurance in Canada; and

WHEREAS it is desirable to provide, by system of registration, deposit of securities, inspection and returns, against such foreign companies, associations or exchanges engaging in or continuing to carry on business in Canada while unable to discharge their liabilities to such policyholders as they become due or while otherwise insolvent and to declare the conditions upon which such companies, associations and exchanges shall be deemed to be insolvent and be subject to be wound up under the Winding-up Act;

THEREFORE, His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Definitions

2 (1) In this Act

"assets in Canada" means all deposits that a company had made with the Receiver General and all assets that have been vested in trust for the company under and for the purposes of this Act;

"business of insurance" means the making of any contract of insurance, and includes any act or acts of inducement to enter into such a contract, and any act or acts relating to the performance thereof, or the rendering of any service in connection therewith;

"company" means any corporation incorporated under the laws of any foreign country for the purpose of carrying on the business of insurance, and includes "association", "exchange" and "fraternal benefit society" as respectively defined by this Act;

Registration Required

4 Subject to section 62, unless a company is registered and holds a certificate of registry from the Minister, the company shall not transact the business of insurance in Canada except as may be required for the protection of the company's policyholders in Canada.

Assets in Canada of Life Insurance Companies *

12 Every company registered under this Act to transact the business of life insurance shall, in respect of its life insurance business in Canada, maintain assets in Canada the total value of which, when determined on the same basis as is prescribed under this Act for the purposes of the annual statement of Canadian business of the company or on the basis of the market values of such assets, whichever basis produces the greater total value, is at least equal to the aggregate of the following amounts;

- (a) an amount equal to the reserve for outstanding policies in Canada included in the annual statement pursuant to sections 38 and 38.2 after deducting from such reserve the amount of all claims the company has against such policies;
- (b) an amount equal to the provision for claims incurred but unpaid;
- (c) an amount equal to the total of the other liabilities of the company in Canada relating to the transaction of its life insurance business in Canada; and
- (d) an amount equal to any sum stated in the report of the valuation actuary of the company pursuant to paragraphs 38.1(2)(b) and (c).

* This section, from S.C. 1976-77, c. 39, s. 31, had not been proclaimed into force as of October 31, 1977. Until such time as it is proclaimed the reader is referred to R.S.C. 1970, c. I-16, s. 12.

Assets in Canada of Other Companies

14 (1) Subject to subsections (1.1) to (1.22), a company, other than a fraternal benefit society, registered under this Act to transact any class of insurance business other than life insurance, shall, in respect of each class of business for which it is registered, maintain assets in Canada the total value of which, when determined on the same basis as is prescribed under this Act for the purposes of the annual statement of its Canadian business or on the basis of the market values of such assets, whichever basis produces the greater total value, is at least equal to the aggregate of the following amounts:

- (a) an amount equal to the reserve computed in accordance with paragraph 47 (1)(a) for non-cancellable accident and sickness policies in Canada and for claims under accident and sickness policies in Canada payable in instalments;
- (b) an amount equal to 1.15 times the amount of the unearned premiums in respect of the policies of the company in Canada other than the policies referred to in paragraph (a);
- (c) an amount equal to 1.15 times the amount of the provision for claims incurred but unpaid, other than claims referred to in paragraph (a);
- (d) an amount equal to the total of the other liabilities of the company in Canada relating to all classes of insurance business in Canada other than life insurance; and
- (e) an amount equal to any sum stated in the report of the valuation actuary of the company pursuant to paragraph 47 (4)(c).

(1.1) For the purposes of paragraph (1)(b),

- (a) where a company has issued policies in Canada on the premium note system, unearned assessments levied in respect of all outstanding premium notes held by the company are deemed to be unearned premiums; and
- (b) unearned premiums shall be calculated pro rata as of the date of the annual statement except that, where the risk insured and the amount of insurance are not substantially uniform over the term of the policy, the unearned premium shall be calculated in such manner as the Superintendent may determine.

(1.11) Subject to subsection (1.12), where under the policies in Canada issued by a company with respect to a particular class of insurance the expected claims ratio is less than 0.95, the company may, by written notice filed with the Superintendent, select a claims ratio not less than the expected claims ratio and where such a selection is made then, in respect of such policies there shall be substituted for the figure 1.15 referred to in paragraph (1)(b) a figure determined by adding 0.20 to the selected claims ratio.

(1.12) Where a company selects a claims ratio under subsection (1.11),

(a) the figure substituted in lieu of the figure referred to in paragraph (1)(b) shall not be less than 1.00 nor more than 1.15;

(b) except with the approval of the Superintendent, the claims ratio selected pursuant to that subsection shall not be less than the claims ratio experienced under the policies with respect to the most recent calendar year; and

(c) at the time of filing with the Superintendent the written notice referred to in that subsection, the company shall file a statement signed by

(i) an actuary, or

(ii) an officer of the company acceptable to the Superintendent,

stating that in the opinion of the person signing the statement the claims ratio selected in accordance with subsection (1.11) is not less than the expected claims ratio.

(1.13) For the purposes of subsections (1.11) and (1.12),

(a) "claims ratio" means, with respect to any particular period for any policies issued by a company with respect to a particular class of insurance, the ratio of the claims incurred during that period under those policies, including applicable adjustment expenses, to the premiums earned during that period in respect of those policies; and

- (b) "expected claims ratio" means the claims ratio that the person signing the statement referred to in paragraph (1.12)(c) expects the company to experience under policies issued by it with respect to a particular class of insurance during the unexpired terms of such policies.
- (1.14) For the purposes of the definition "claims ratio" in subsection (1.13), the Superintendent may issue directions determining the applicable adjustment expenses for claims incurred.
- (1.15) Subject to subsections (1.16) to (1.18), the aggregate of the amounts referred to in subsection (1) may be reduced in respect of any policy or group of policies issued in Canada or claim payable by the company under a policy in Canada where the risk is reinsured in whole or in part with another insurer (hereinafter in this section called the "reinsurer").
- (1.16) The amount by which the aggregate of the amounts referred to in subsection (1) may be reduced in respect of any policy, group of policies or claim shall not exceed such portion of the amount included in the aggregate for that policy, group of policies or claim as may reasonably be considered to apply to the portion of the risk undertaken by the reinsurer.
- (1.17) Where the reinsurer is not registered under the Canadian and British Insurance Companies Act, and is incorporated by or under the laws of a province, the reduction authorized under this section shall not be made unless the Superintendent is satisfied that the financial condition of the reinsurer is satisfactory and that its operations are conducted in accordance with sound business and financial practices.
- (1.18) Where the insurer is not registered under this Act or the Canadian and British Insurance Companies Act and is not incorporated by or under the laws of Canada or a province, the reduction authorized under this section may be made only to the extent that security is maintained in Canada in respect of the potential obligations of the reinsurer in an amount, of a nature and under arrangements satisfactory to the Superintendent.
- (1.19) Where the assets in Canada of a company include shares of a corporation transacting the business of insurance, other than the business of life insurance, the shares

shall not be taken into account for the purposes of subsection (1) at a value that exceeds a proportion of the corporation (as that value would be determined for the purposes of subsection (1)) over the minimum value of assets that would be required to be maintained by the corporation were it subject to subsection 103(1) of the Canadian and British Insurance Companies Act, the proportion being equal to the ratio that the portion of the capital stock of the corporation represented by the said shares bears to the total capital stock of the corporation.

- (1.2) The aggregate of the amounts referred to in subsection (1) may be further reduced by such proportion of the amounts receivable from agents of the company in respect of policies in force as may be determined by the Superintendent.
- (1.21) With respect to business to which paragraph (1)(b) applies, a company may substitute for the unearned premiums, for purposes of that paragraph, twice the net annual cost to the insured of insurance in force in Canada on the date of the annual statement of Canadian business, determined by deducting from the annual premiums charged to the insured, a credit allowance computed at the rate of the weighted average dividend or refund paid or credited by the company to its policyholders during the preceding five years.
- (1.22) Where a company transacts the business of hail insurance in Canada, the aggregate of the amounts referred to in subsection (1) shall be increased by an amount equal to fifty percent of the total premiums received by the company in respect of its business of hail insurance in Canada during the preceding calendar year.

14 (2) The assets in Canada of a purely mutual fire insurance company or of an exchange shall continue to form a part of the general assets of the company or exchange, available *pari passu* to all its policyholders or subscribers in or out of Canada in the same manner as its other funds; but no such company or exchange shall, except with the consent of the Minister, and upon such terms and conditions as the Minister may determine, reduce the amount of its assets in Canada below the amount otherwise required by this Act to be maintained in Canada.

14 (3) Subsection (2) does not apply to any such company or exchange that files with the Minister, in a form approved by him, a declaration that the assets in Canada of such company or exchange are held for the protection of the policyholders in Canada, exclusively, of such company or exchange. R.S., c. 125, s. 14.

Declaration of Intent

63 It is hereby declared that this Act has been passed with the object and intent of prescribing the conditions on which foreign insurance companies may be registered for the purpose of transacting the business of insurance in Canada, of determining the conditions upon which such companies shall be deemed to be insolvent and of preventing any such companies that are insolvent from commencing, or continuing, to transact the business of insurance in Canada; and if any provision of this Act should hereafter be determined to have any operation or effect beyond the legislative competence of the Parliament of Canada to authorize and sanction, and to be, in that respect, void and inoperative, it shall, in such respect, be treated as severable from the other provisions of this Act, and such other provisions continue to have full force and effect according to their tenor. R.S., c. 125, s. 63.

Source: "Foreign Insurance Companies Act", Revised Statutes of Canada 1970, Chapter I-16, Queen's Printer, Ottawa.

"An Act to Amend the Foreign Insurance Companies Act", Revised Statute of Canada, 1970, 1st Supplement, Chapter 20, Queen's Printer, Ottawa.

"An Act to Amend the Canadian and British Insurance Companies Act and the Foreign Insurance Companies Act", The Canada Gazette, Part III, July 14, 1977, Queen's Printer, Ottawa.

THE INVESTMENT COMPANIES ACT

S.C. 1970-71-72, c. 33

S.C. 1974-75-76, c. 33

The organization and activities of federally incorporated investment companies, more generally known as sales finance companies, are governed by the Investment Companies Act. The provisions of the Act that affect foreign investment in these companies are summarized below. Their effect is to prevent the takeover of Canadian-controlled sales finance companies by non-residents; to permit non-residents to retain an existing degree of control; and to permit non-residents to establish new sales finance companies without restrictions on share ownership.

Auditor

The Auditor of a federally incorporated investment company must be ordinarily resident in Canada and must have practiced his profession in Canada continuously for six consecutive years immediately preceding his appointment by the investment company.

Limits on Shares Held by Non-Residents

The limits on shares held by non-residents in sales finance companies are the same as those imposed for life insurance companies under the Canadian and British Insurance Companies Act. They are summarized at page 73. The "prescribed day" for sales finance companies is however October 17, 1969.

Non-Resident Voting Restrictions

The provisions of the Investment Companies Act that govern non-resident voting are the same as those specified in the Canadian and British Insurance Companies Act for life insurance companies. They are summarized at page 74.

INVESTMENT COMPANIES ACT

Qualifications of Auditor

- 6 (1) The auditor of an investment company shall, at the time of his appointment, be
- (a) an accountant who
 - (i) is a member in good standing of an institute or association of accountants incorporated by or under the authority of the legislature of a Province;
 - (ii) is ordinarily resident in Canada; and
 - (iii) has practised his profession in Canada continuously during the six consecutive years immediately preceding his appointment; or
 - (b) a firm of accountants of which one or more members are qualified in accordance with paragraph (a).

Definitions

- 10 (1) In this section and sections 11 to 17,
- (a) "corporation" includes an association, partnership or other organization;
 - (b) "non-resident" means
 - (i) an individual who is not ordinarily resident in Canada,
 - (ii) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada,
 - (iii) a corporation that is controlled directly or indirectly by non-residents as defined in sub-paragraph (i) or (ii),
 - (iv) a trust established by a non-resident as defined in sub-paragraph (i), (ii) or (iii), or a trust in which non-residents as so defined have more than fifty per cent of the beneficial interest, or
 - (v) a corporation that is controlled directly or indirectly by a trust mentioned in subparagraph (iv);

- (c) "resident" means an individual, corporation or trust that is not a non-resident"; and
- (d) "sales finance company" means an investment company at least twenty-five per cent of the assets of which, valued in accordance with the regulations, consist of

- (i) loans, whether secured or unsecured, made by the company, or
 - (ii) purchases by the company of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange, promissory notes or other obligations representing part or all of the sale price of merchandise or services;

and the value of assets of an investment company deemed by subsection (4) of section 2 not to be assets that consist of loans described in subparagraph (i) of paragraph (b) of subsection (1) of section 2 shall not be included in calculating the aggregate value of its assets described in subparagraph (i) and (ii) of this paragraph.

10 (1.1) In applying this section and sections 11 to 17 to a corporation incorporated or continued under the Canada Business Corporations Act that is a sales finance company, a reference to

- (a) the book or books required by the Canada Corporations Act to be kept shall be read and construed as a reference to the records that a corporation is required to maintain under the Canada Business Corporations Act; and
- (b) a share of the capital stock or a share of any class of shares of the capital stock shall be read and construed as a reference to a share of any class or series of shares of the corporation.

Shares Held Jointly

10 (4) For the purposes of sections 11 to 14, where a share of the capital stock of a sales finance company is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident.

Limit on Shares Held by Non-Residents

11 (1) The directors of a sales finance company shall refuse to allow, in the book or books required by the Canada Corporations Act to be kept by the company, the entry of a transfer of any share of a class of shares of the capital stock of the company to a non-resident

- (a) if, when the total number of shares of that class of shares of the capital stock of the company held by non-residents exceeds twenty-five per cent of the total number of issued and outstanding shares of such class, the entry of the transfer would increase the percentage of shares of such class held by non-residents;
- (b) if, when the total number of shares of that class of shares of the capital stock of the company held by non-residents is twenty-five per cent or less of the total number of issued and outstanding shares of such class, the entry of the transfer would cause the total number of shares of such class held by non-residents to exceed twenty-five per cent of the total number of issued and outstanding shares of such class;
- (c) if, when the total number of shares of that class of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, exceeds ten per cent of the total number of issued and outstanding shares of such class, the entry of the transfer would increase the percentage of shares of such class held by the non-resident and by other shareholders associated with him, if any; or
- (d) if, when the total number of shares of that class of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, is ten per cent or less of the total number of issued and outstanding shares of such class, the entry of the transfer would cause the number of shares of such class held by the non-resident and by other shareholders associated with him, if any, to exceed ten per cent of the issued and outstanding shares of such class.

Allotment to Non-Resident

11 (2) The directors of a sales finance company shall not allot or allow the allotment of, any shares of the capital stock of the company to any non-resident in circumstances where, if the allotment to such non-resident were a transfer of those shares, the entry thereof in the book or books required by the Canada Corporations Act to be kept by the company would be required, under subsection (1) to be refused by the directors.

Penalty

11 (3) Default in complying with the provisions of this section does not affect the validity of a transfer or allotment of a share of the capital stock of the company that has been entered in the book or books required by the Canada Corporations Act to be kept by the company, but every director who knowingly authorizes or permits such default is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

Voting Rights of Nominees: Suspended

12 (1) Where a resident holds shares of the capital stock of a sales finance company in the right of or for the use or benefit of a non-resident, the resident shall not, either in person or by proxy, exercise the voting rights pertaining to those shares.

Voting Rights of Non-Residents

12 (2) Subject to subsection (3) of section 14, where any shares of a class of shares of the capital stock of a sales finance company are held in the name or right of or for the use or benefit of a non-resident, no person shall, either as proxy or in person, exercise the voting rights pertaining to such shares held by the non-resident or in his right or for his use or benefit, if the total of shares of such class so held, together with shares or such class held in the name or right of or for the use or benefit of

- (a) any shareholders associated with the non-resident, or
- (b) any persons who would, under subsection (2) of section 10, be deemed to be shareholders associated with the non-resident were such persons and the non-resident themselves shareholders,

exceed in number ten per cent of the issued and outstanding shares of such class.

Penalty

12 (3) Every person who knowingly contravenes a provision of this section is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

Definitions

14 (1) In this section,

(a) "associates of the non-resident" means, with reference to any particular day,

(i) any shareholders associated with the non-resident on that day, and

(ii) any persons who would, under subsection (2) of section 10, be deemed to be shareholders associated with the non-resident on that day were such persons and the non-resident themselves shareholders;

(b) "prescribed day" means,

(i) the 17th day of October, 1969, in the case of a company that would have been a sales finance company within the meaning of paragraph (d) of subsection (1) of section 10, on that day if this Act had then been in force,

(ii) in the case of a company incorporated on or after the 17th day of October, 1969, but before the coming into force of this Act, the day it would have become a sales finance company within the meaning of paragraph (d) of subsection (1) of section 10, if this Act had been in force on that day,

(iii) in the case of a sales finance company that ceases to be such a company after the coming into force of this Act and again becomes a sales finance company, the day on which it last became a sales finance company, and

(iv) in any other cases, the day on which the company becomes a sales finance company; and

- (c) "shares held by or for the non-resident and associates" means, with reference to any particular day, the aggregate number of shares held on that day in the name or right of or for the use or benefit of the non-resident and associates of the non-resident on that day.

Exception for Non-Resident Ownership of Company

14 (2) Where more than fifty per cent of the issued and outstanding shares of the capital stock of a sales finance company to which are attached voting rights exercisable under all circumstances are held in the name or right of or for the use or benefit of one non-resident at the commencement of the prescribed day, sections 11 to 13 do not apply to or in respect of that company; but if at any time thereafter there is no one non-resident in whose name or right or for whose use or benefit more than fifty per cent of the issued and outstanding shares of the capital stock of the company to which are attached voting rights exercisable under all circumstances are held, those sections apply from and after that time to and in respect of that company.

Exception for Individual Non-Resident

14 (3) Where at the commencement of the prescribed day the number of shares of a class of shares of the capital stock of a sales finance company held in the name or right of or for the use or benefit of a non-resident together with the number of shares of such class, if any, held at the commencement of that day in the name or right of or for the use or benefit of any associates of the non-resident exceed ten per cent of the number of shares of such class at that time issued and outstanding, the voting rights pertaining to all shares of such class held in the name or right of or for the use or benefit of the non-resident may notwithstanding subsection (2) of section 12 be exercised, in person or by proxy, so long as the percentage of shares of such class held by or for the non-resident and associates does not exceed either the percentage of shares of such class held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of shares of such class held by or for the non-resident and associates on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 12 does not apply.

Change of Status of Corporate Resident

14 (4) Where after the coming into force of this Act a corporation that was at any time a resident becomes a non-resident any shares of the capital stock of the sales finance company acquired by the corporation while it was a resident and held by it while it was a non-resident shall be deemed, for the purposes of sections 11 and 12, to be shares held by a resident for the use or benefit of a non-resident.

Transferring Beneficial Holding

14 (5) The directors of a sales finance company may, notwithstanding section 11, allow in the book or books required by the Canada Corporations Act to be kept by the company, the entry of a transfer of any share of the capital stock of the company from a resident to a non-resident where it is shown to the directors on evidence satisfactory to them that the share was at the commencement of the prescribed day held by the resident in the right of or for the use or benefit of the non-resident.

Entry After Prescribed Day

14 (6) If at any time on or after the 17th day of October, 1969, and before the coming into force of this Act the directors of a sales finance company allow, in the book or books required by the Canada Corporations Act to be kept by the company, the entry of any transfer or allotment of any share of the capital stock of the company to a non-resident that they would have been required to refuse or prevent under section 11 had this Act come into force on the 17th day of October, 1969, no person shall, as proxy or in person, exercise the voting rights pertaining to such share so long as the share is held in the name or right of or for the use or benefit of any non-resident.

Directors' Decision re Resident or Non-Resident Status

14 (8) In determining for the purposes of sections 10 to 13 and this section whether a person is a resident or a non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of a sales finance company may rely upon any statements made in any declarations submitted under section 13 or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge.

Sale of Undertaking

15 A sales finance company to or in respect of which sections 11 to 13 apply shall not sell or otherwise dispose absolutely of the whole or any substantial part of its undertakings, and the sale or disposal is of no effect, unless and until it has been approved by the Minister, if, in the opinion of the Minister, it would be likely to result directly or indirectly in the acquisitions of the whole or any substantial part of the undertaking by a non-resident.

Source: "Investment Companies Act", Statutes of Canada 1970-71-72, Chapter 33, Queen's Printer, Ottawa.

"An Act respecting Canadian Business Corporations", Statutes of Canada, 1974-75-76, Chapter 33, Queen's Printer, Ottawa.

THE LOAN COMPANIES ACT

R.S.C. 1970, c. L-12

R.S.C. 1970, 1st Supp., c. 24

The organization and activities of federally incorporated loan companies are governed by the Loan Companies Act. The provisions of the Act affecting foreign investment are summarized below. Their effect is to prevent the takeover of Canadian-controlled loan companies by non-residents; to permit non-residents to retain an existing degree of control; and to permit non-residents to establish new loan companies without restrictions on share ownership.

Directors

At least three quarters of the directors of a federally incorporated loan company must be Canadian citizens ordinarily resident in Canada.

Limits on Shares Held by Non-Residents

The limits on shares held by non-residents are the same for loan companies as those imposed for life insurance companies by the Canadian and British Insurance Companies Act. They are summarized at page 73.

Non-Resident Voting Restrictions

The provisions of the Loan Companies Act that govern non-resident voting are the same as those specified in the Canadian and British Insurance Companies Act for life insurance companies. They are summarized at page 74.

LOAN COMPANIES ACT

Definition

2 In this Act

"the company" or "loan company" means a company incorporated for the purpose of

- (a) exercising all the powers set forth in sections 60 and 62 or
- (b) lending money on the security of freehold real estate, or investing money in mortgage or hypothecs upon freehold real estate, either with or without other objects or powers;

Application of Act

3 (1) This Act applies to every loan company incorporated by a special Act of the Parliament of Canada and any provision of the special Act that is inconsistent or in conflict with the provisions of this Act does not apply.

Directors

19 At least three-quarters of the directors of the company must be Canadian citizens ordinarily resident in Canada.

Definition

44 (1) In this section and sections 45 to 48 "non-resident" means

- (a) an individual who is not ordinarily resident in Canada,
- (b) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada,
- (c) a corporation that is controlled directly or indirectly by non-residents as defined in paragraph (a) or (b),
- (d) a trust established by a non-resident as defined in paragraph (a), (b) or (c), or a trust in which non-residents as so defined have more than fifty percent of the beneficial interest, or
- (e) a corporation that is controlled directly or indirectly by a trust mentioned in paragraph (d);

Shares Held Jointly

44 (3) For the purposes of sections 45 to 48, where a share of the capital stock of a company is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident. 1964-65, c. 40, s. 38.

Limit on Shares Held by Non-Residents

45 (1) The directors of a company shall refuse to allow in the book or books referred to in section 42 the entry of a transfer of any share of the capital stock of the company to a non-resident

- (a) if, when the total number of shares of the capital stock of the company held by non-residents exceeds twenty-five percent of the total number of issued and outstanding shares of such stock, the entry of the transfer would increase the percentage of such shares held by non-residents;
- (b) if, when the total number of shares of the capital stock of the company held by non-residents is twenty-five percent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the total number of such shares of stock held by non-residents to exceed twenty-five percent of the total number of issued and outstanding shares of such stock;
- (c) if, when the total number of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, exceeds ten percent of the total number of issued and outstanding shares of such stock, the entry of the transfer would increase the percentage of such shares held by the non-resident and by other shareholders associated with him, if any; or
- (d) if, when the total number of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, is ten percent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the number of such shares of stock held by the non-resident and by other

shareholders associated with him, if any, to exceed ten percent of the issued and outstanding shares of such stock.

Allotment to Non-Resident

45 (2) The directors of a company shall not, after the day of commencement of the first general meeting of the shareholders of the company, allot, or allow the allotment of, any shares of the capital stock of the company to any non-resident in circumstances where, if the allotment to such non-resident were a transfer of those shares, the entry thereof in such book or books would be required, under subsection (1), to be refused by the directors.

Penalty

45 (3) Default in complying with the provisions of this section does not affect the validity of a transfer or allotment of a share of the capital stock of the company that has been entered in the book or books referred to in section 42, but every director who knowingly authorizes or permits such default is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both. 1964-65, c. 40, s. 38.

Voting Rights of Non-Residents

46 (1) Where a resident holds shares of the capital stock of a company in the right of, or for the use or benefit of, a non-resident, the resident shall not, either in person or by proxy, exercise the voting rights pertaining to those shares.

46 (2) Subject to subsection 48(3), where any shares of the capital stock of a company are held in the name or right of or for the use or benefit of a non-resident, no person shall, either as proxy or in person, exercise the voting rights pertaining to such shares held by the non-resident or in his right or for his use or benefit, if the total of such shares so held, together with such shares held in the name or right of or for the use or benefit of

- (a) any shareholders associated with the non-resident, or
- (b) any persons who would, under subsection 44(2), be deemed to be shareholders associated with the non-resident were such persons and the non-resident themselves shareholders,

exceed in number ten percent of the issued and outstanding shares of such stock.

Penalty

46 (3) Every person who knowingly contravenes a provision of this section is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Definition

48 (1) In this section,

"associates of the non-resident" means, with reference to any particular day,

- (a) any shareholders associated with the non-resident on that day, and
- (b) any persons who would, under subsection 44 (2), be deemed to be shareholders associated with the non-resident on that day were such persons and the non-resident themselves shareholders;

"prescribed day" means

- (a) the 23rd day of September 1964, in the case of a loan company to which this Act applies that was such a company on that date,
- (b) the day of commencement of the first general meeting of the shareholders of the company, in the case of a loan company to which this Act applies and incorporated after the 23rd day of September 1964, and
- (c) the date of the issue of letters patent pursuant to section 7, in the case of a corporation continued as a corporation pursuant to that section;

"shares held by or for the non-resident and associates" means, with reference to any particular day, the aggregate number of shares held on that day in the name or right of or for the use or benefit of the non-resident and associates of the non-resident on that day.

Exception for Non-Resident Ownership

48 (2) Where more than fifty per cent of the issued and outstanding shares of the capital stock of a company are held in the name or right of or for the use or benefit of one non-resident at the commencement of the prescribed day, sections 45 to 47 do not apply to or in respect of that company; but if at any time thereafter there is no one non-resident in whose name or right or for whose use

or benefit more than fifty percent of the issued and outstanding shares of the capital stock of the company are held, those sections apply from and after that time to and in respect of that company.

Exception for Individual Non-Resident

48 (3) Where at the commencement of the prescribed day the number of shares of the capital stock of a company held in the name or right of or for the use or benefit of a non-resident together with the number of such shares, if any, held at the commencement of that day in the name or right of or for the use or benefit of any associates of the non-resident exceed ten percent of the number of shares of such stock at that time issued and outstanding, the voting rights pertaining to the shares held in the name or right of or for the use or benefit of the non-resident may notwithstanding subsection 46(2) be exercised, in person or by proxy, so long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 46 does not apply.

Change of Status of Corporate Resident

48 (4) Where after the 17th day of March 1965 a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of the company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 45 and 46, to be shares held by a resident for the use or benefit of a non-resident.

Stock Splits

48 (5) Where on or after the prescribed day the par value of shares of the capital stock of the company is reduced, the directors of the company may, notwithstanding subsection 45(2), allot shares of the capital stock of the

company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.

Transferring Beneficial Holding

48 (6) The directors of a company may, notwithstanding section 45, allow in the book or books referred to in section 42 the entry of a transfer of any share of the capital stock of the company from a resident to a non-resident where it is shown to the directors on evidence satisfactory to them that the share was at the commencement of the prescribed day held by the resident in the right of or for the use or benefit of the non-resident.

Entry After Prescribed Day

48 (7) If at any time on or after the prescribed day and before the 18th day of March 1965 the directors of a company allow, in the book or books referred to in section 42, the entry of any transfer or allotment of any share of the capital stock of the company to a non-resident that they would have been required to refuse or prevent under section 45 had that section come into force on the prescribed day, no person shall, as proxy or in person, exercise the voting rights pertaining to such share so long as the share is held in the name or right of or for the use or benefit of any non-resident.

Director's Decision re Resident or Non-Resident Status

48 (9) In determining for the purposes of sections 44 to 48 whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of the company may rely upon any statements made in any declarations submitted under section 47 or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge. 1964-65 s. 38.

Source: "Loan Companies Act", Revised Statutes of Canada, 1970, Chapter L-12, Queen's Printer, Ottawa, 1970.

"Loan Companies Act", Revised Statutes of Canada, 1970, 1st Supplement, Chapter 24, Queen's Printer, Ottawa, 1970.

THE TRUST COMPANIES ACT

R.S.C. 1970, c. T-16
R.S.C. 1970, 1st Supp., c. 47

The organization and activities of federally incorporated trust companies are governed by the Trust Companies Act. The provisions of the Act that affect foreign investment are summarized below. Their effect is to prevent the takeover of Canadian-controlled trust companies by non-residents; to permit non-residents to retain an existing degree of control; and to permit non-residents to establish new trust companies without restrictions on share ownership.

Directors

At least three quarters of the directors of a federally incorporated trust company must be Canadian citizens ordinarily resident in Canada.

Limits on Shares Held by Non-Residents

The limits on shares held by non-residents are the same for trust companies as those imposed for life insurance companies by the Canadian and British Insurance Companies Act. They are summarized at page 73.

Non-Resident Voting Restrictions

The provisions of the Trust Companies Act that govern non-resident voting are the same as those specified in the Canadian and British Insurance Companies Act for life insurance companies. They are summarized at page 74.

TRUST COMPANIES ACT

Definition

2 In this Act

"the company" or "trust company" means a company incorporated for the purpose of

- (a) exercising the powers set forth in section 63, or
- (b) executing the office of executor, administrator or trustee, either with or without other objects or powers;

Application of the Act

3 (1) This Act applies to every trust company incorporated by

- (a) a special Act of the Parliament of Canada, or
- (b) letters patent issued under authority of an Act of the Parliament of Canada.

3 (3) Where a trust company has been incorporated by letters patent under authority of an Act of the Parliament of Canada, none of the provisions of that Act inconsistent with this Act are applicable to the company on or after the 1st day of July 1947. R.S., c. 272, s. 3.

Directors

19 At least three-quarters of the directors of the company must be Canadian citizens ordinarily resident in Canada.

Definition

37 (1) In this section and sections 38 to 41 "non-resident" means

- (a) an individual who is not ordinarily resident in Canada,
- (b) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada,
- (c) a corporation that is controlled directly or indirectly by non-residents as defined in paragraph (a) or (b),

- (b) a trust established by a non-resident as defined in paragraph (a), (b) or (c), or a trust in which non-residents as so defined have more than fifty percent of the beneficial interest, or
- (e) a corporation that is controlled directly or indirectly by a trust mentioned in paragraph (d);

Shares Held Jointly

37 (3) For the purposes of sections 38 to 41, where a share of the capital stock of a company is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident. 1964-65, c. 40, s. 30.

Limit on Shares Held by Non-Residents

38 (1) The directors of a company shall refuse to allow in the book or books referred to in section 35 the entry of a transfer of any share of the capital stock of the company to a non-resident

- (a) if, when the total number of shares of the capital stock of the company held by non-residents exceeds twenty-five percent of the total number of issued and outstanding shares of such stock, the entry of the transfer would increase the percentage of such shares held by non-residents;
- (b) if, when the total number of shares of the capital stock of the company held by non-residents is twenty-five percent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the total number of such shares of stock held by non-residents to exceed twenty-five percent of the total number of issued and outstanding shares of such stock;
- (c) if, when the total number of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, exceeds ten percent of the total number of issued and outstanding shares of such stock, the entry of the transfer would increase the percentage of such shares held by the non-resident and by other shareholders associated with him, if any; or

- (d) if, when the total number of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, is ten percent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the number of such shares of stock held by the non-resident and by other shareholders associated with him, if any, to exceed ten percent of the issued and outstanding shares of such stock.

Allotment to Non-Resident

38 (2) The directors of a company shall not, after the day of commencement of the first general meeting of the shareholders of the company, allot, or allow the allotment of, any shares of the capital stock of the company to any non-resident in circumstances where, if the allotment to such non-resident were a transfer of those shares, the entry thereof in such book or books would be required, under subsection (1), to be refused by the directors.

Penalty

38 (3) Default in complying with this section does not affect the validity of a transfer or allotment of a share of the capital stock of the company that has been entered in the book or books referred to in section 35, but every director who knowingly authorizes or permits such default is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both. 1964-65, c. 40, s. 30.

Voting Rights of Non-Residents

39 (1) Where a resident holds shares of the capital stock of a company in the right of, or for the use or benefit of, a non-resident, the resident shall not, either in person or by proxy, exercise the voting rights pertaining to those shares.

39 (2) Subject to subsection 41(3), where any shares of the capital stock of a company are held in the name or right of or for the use or benefit of a non-resident, no person shall, either as proxy or in person, exercise the voting rights pertaining to such shares held by the non-resident or in his right or for his use or benefit, if the total of such shares so held, together with such shares held

in the name or right of or for the use or benefit of

- (a) any shareholders associated with the non-resident,
or
- (b) any persons who would, under subsection 27(2), be
deemed to be shareholders associated with the
non-resident were such persons and the non-resident
themselves shareholders,

exceed in number ten percent of the issued and outstanding
shares of such stock.

Penalty

39 (3) Every person who knowingly contravenes a
provision of this section is guilty of an offence punishable
on summary conviction and is liable to a fine not exceeding
five thousand dollars or to imprisonment for a term
not exceeding one year, or to both.

Definition

41 (1) In this section,

"associates of the non-resident" means, with reference to
any particular day,

- (a) any shareholders associated with the non-resident
on that day, and
- (b) any persons who would, under subsection 37(2), be
deemed to be shareholders associated with the
non-resident on that day were such persons and the
non-resident themselves shareholders;

"prescribed day" means

- (a) the 23rd day of September 1964, in the case of a trust
company to which this Act applies that was such a
company on that date,
- (b) the day of commencement of the first general meeting
of the shareholders of the company, in the case of a
trust company to which this Act applies and incorporated
after the 23rd day of September 1964, and
- (c) the day of the issue of letters patent pursuant to
section 6.1, in the case of a corporation continued
as a corporation pursuant to that section;

"shares held by or for the non-resident and associates" means, with reference to any particular day, the aggregate number of shares held on that day in the name or right of or for the use or benefit of the non-resident and associates of the non-resident on that day.

Exception of Non-Resident Ownership

41 (2) Where more than fifty percent of the issued and outstanding shares of the capital stock of a company are held in the name or right of or for the use or benefit of one non-resident at the commencement of the prescribed day, sections 38 to 40 do not apply to or in respect of that company; but if at any time thereafter there is no one non-resident in whose name or right or for whose use or benefit more than fifty percent of the issued and outstanding shares of the capital stock of the company are held, those sections apply from and after that time to and in respect of that company.

Exception for Individual Non-Resident

41 (3) Where at the commencement of the prescribed day the number of shares of the capital stock of a company held in the name or right of or for the use or benefit of a non-resident together with the number of such shares, if any, held at the commencement of that day in the name or right of or for the use or benefit of any associates of the non-resident exceed ten percent of the number of shares of such stock at that time issued and outstanding, the voting rights pertaining to the shares held in the name or right of or for the use or benefit of the non-resident may notwithstanding subsection 39(2) be exercised, in person or by proxy, so long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 39 does not apply.

Change of Status of Corporate Resident

41 (4) Where after the 17th day of March 1965 a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of the company acquired by

the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 38 and 39, to be shares held by a resident for the use or benefit of a non-resident.

Stock Splits

41 (5) Where on or after the prescribed day the par value of shares of the capital stock of the company is reduced, the directors of the company may notwithstanding subsection 38(2), allot shares of the capital stock of the company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value, but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.

Transferring Beneficial Holding

41 (6) The directors of a company may, notwithstanding section 38, allow in the book or books referred to in section 35 the entry of a transfer of any share of the capital stock of the company from a resident to a non-resident where it is shown to the directors on evidence satisfactory to them that the share was at the commencement of the prescribed day held by the resident in the right of or for the use or benefit of the non-resident.

Entry After Prescribed Day

41 (7) If at any time on or after the prescribed day and before the 18th day of March 1965 the directors of a company allow, in the book or books referred to in section 35, the entry of any transfer or allotment of any share of the capital stock of the company to a non-resident that they would have been required to refuse or prevent under section 38 had that section come into force on the prescribed day, no person shall, as proxy or in person, exercise the voting rights pertaining to such share so long as the share is held in the name or right of or for the use or benefit of any non-resident.

Directors' Decision re Resident or Non-Resident Status

41 (9) In determining for the purposes of sections 37 to 41 whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances

relevant to the performance of their duties under those sections, the directors of the company may rely upon any statements made in any declarations submitted under section 40 or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statement or knowledge. 1964-65, c. 40, s. 30.

Source: "Trust Companies Act", Revised Statutes of Canada, 1970, Chapter T-16, Queen's Printer, Ottawa, 1970

"Trust Companies Act", Revised Statutes of Canada, 1970, 1st Supplement, Chapter 47, Queen's Printer, Ottawa, 1970.

Part V

NATURAL RESOURCES

CANADA MINING REGULATIONS

SOR/61-86, P.C. 1961-325
SOR/62-249, P.C. 1964-968
SOR/66-80, P.C. 1966-214

Mining leases in the Northwest Territories can only be granted to a Canadian citizen or to a qualifying corporation. To qualify, a corporation must be incorporated within Canada and must have at least 50 per cent of its shares beneficially owned by Canadian citizens. Alternatively, the corporation must be incorporated in Canada and have its shares listed on a recognized Canadian stock exchange and must also give Canadians an opportunity to participate in the financing and ownership of the corporation.

The Canada Mining Regulations are made under the Territorial Lands Act (R.S.C. 1970, c. T-6).

CANADA MINING REGULATIONS

Application

- 2 (i) These regulations apply to
- (a) lands in the Northwest Territories that are vested in the Crown or of which the government of Canada has the power to dispose, and
 - (b) public lands as defined in the Public Lands Grants Act that are not within any province and for the sale, lease or other disposition of which there is no other provision in the law.

Leasing

- 45 (5) A lease shall not be granted under this section
- (a) to a person unless the Minister is satisfied that he is a Canadian citizen over eighteen years of age and that he will be the beneficial owner of the interest to be granted;
 - (b) to a corporation incorporated outside of Canada; or
 - (c) to a corporation, unless the Minister is satisfied
 - (i) that at least fifty per cent of the issued shares of the corporation are beneficially owned by
 - (A) persons who are Canadian citizens,
 - (B) corporations that meet the qualifications set out in subparagraph (ii), or
 - (C) both such persons and corporations,
 - (ii) that the shares of the corporation are listed on a recognized Canadian stock exchange and that Canadians will have an opportunity of participating in the financing and ownership of the corporation, or
 - (iii) that the shares of the corporation are wholly owned by a corporation that meet the qualifications outlined in subparagraphs (i) or (ii) of this paragraph.

45 (6) No lease shall be issued, granted, renewed, assigned or transferred to any person who has not qualified under this section to be granted a lease.

Transfer of a Lease

58 (2) A lease may only be transferred to a person qualified under section 45 to be a holder of a lease.

Source: "Territorial Lands Act, Public Lands Grants Act, Canada Mining Regulations", The Canada Gazette, Part II, Vol. 95, No. 6 SOR/61-86, P.C. 1961-325, p. 303-353, Queen's Printer, Ottawa, 1961.

"Territorial Lands Act, Public Lands Grants Act". The Canada Gazette, Part II, Vol. 96, No. 14, SOR/62-249, P.C. 1964-968, p. 734-746, Queen's Printer, Ottawa, 1962.

"Territorial Lands Act", The Canada Gazette, Part II, Vol. 100, No. 4, SOR/66-80, P.C. 1966-214, p. 223, Queen's Printer, Ottawa, 1966.

CANADA OIL AND GAS LAND REGULATIONS

SOR/61-253, P.C. 1961-797
SOR/69-415, P.C. 1969-1584
SOR/73-13 , P.C. 1973-3037
SOR/77-666, P.C. 1977-2155

Recent amendments to the Canada Oil and Gas Land Regulations give Petro-Canada preference with respect to the acquisition of oil and gas rights in Crown lands. The amendments also give Petro-Canada certain rights to acquire an interest in permits for oil and gas exploration that are being renewed. Unless there has been a "significant discovery" on the land for which a renewal permit is being sought, Petro-Canada may, if the Canadian equity participation in the applicant is between 25 and 35 percent, acquire up to a 10 percent interest in the renewal permit. If Canadian equity participation in the applicant is less than 25 percent, Petro-Canada may acquire an additional interest. Rules for determining the extent of Canadian equity participation are given in the Regulations.

Oil and gas leases in the Yukon or Northwest Territories can only be granted to a Canadian citizen or to a qualified corporation. To qualify a corporation must be incorporated in Canada with at least 50 percent of its shares beneficially owned by Canadian citizens. Alternatively, the corporation must be incorporated in Canada and have its shares listed on a recognized Canadian stock exchange and give Canadians an opportunity to participate in the financing and ownership of the corporation.

Exploration Agreements

30 (1) The Minister or a person designated by the Minister may, subject to this section, enter into an exploration agreement relating to Crown reserve lands.

30 (3) Subject to subsection (7), before entering into any exploration agreement, the Minister shall publish a notice in the Canada Gazette and in any other publication he considers appropriate calling for the submission of proposals in respect of the interests to be conferred by the agreement.

30 (4) A notice calling for the submission of proposals under subsection (3) shall be published at least sixty days before the closing date fixed in the notice for the submission of proposals and shall set out any requirement or matter applicable to persons submitting proposals, including

- (a) the amount of any deposit required and the conditions for its return;
- (b) any work requirements, the term of the agreement and any rental payable;
- (c) the royalty payable in respect to any oil or gas produced under a lease granted under section 55 if different from that payable under section 86;
- (d) any requirements for
 - (i) Canadian equity participation,
 - (ii) participation by the Government of Canada or any department, branch or agency thereof, or
 - (iii) employment of Canadian goods and services; and
- (e) such other terms and conditions as the Minister may determine.

30 (5) In selecting any proposal submitted pursuant to this section for the purpose of negotiating an exploration agreement, the Minister shall take into account any factors he considers appropriate in the public interest but is not bound to select any particular proposal submitted.

Petro-Canada

33 (1) Subject to subsections (2) to (8), Petro-Canada has the right, in priority to any other person,

- (a) during a period of one year commencing on the day this section comes into force, to select lands from among the lands that are Crown reserve lands on such coming into force in the manner and quantities approved by the Minister or a person designated by the Minister; and
- (b) during a period of seven years commencing on the day this section comes into force, to select, within one year from the date it receives notice from the Minister or a person designated by the Minister that the lands are available for selection, lands from among those that have become Crown reserve lands since such coming into force, in the manner and quantities approved by the Minister or a person designated by the Minister.

33 (2) The Minister or a person designated by the Minister shall give prompt notice to Petro-Canada of lands that are or have become Crown reserve lands whereupon Petro-Canada may exercise the rights granted by subsection (1).

33 (3) In exercising its right to select lands pursuant to subsection (1), Petro-Canada shall not select more than twenty-five per cent of the land in respect of which it has that right unless the Minister authorizes the selection of a greater percentage in any case where he considers it appropriate due to the limited area of land available.

Eligibility for Oil and Gas Lease

55 (1) On application to the Minister, a permittee, the holder of an exploration agreement or the holder of a special renewal permit shall be granted an oil and gas lease.

55 (2) An oil and gas lease shall not be granted under this section

- (a) to a person unless the Minister is satisfied that he is a Canadian citizen over twenty-one years of age, and that he will be the beneficial owner of the interest to be granted;
- (b) to a corporation incorporated outside of Canada; or

- (c) to a corporation unless the Minister is satisfied
 - (i) that at least fifty per cent of the issued shares of the corporation is beneficially owned by
 - (A) persons who are Canadian citizens,
 - (B) corporations that meet the qualifications set out in subparagraph (ii), or
 - (C) both such persons and corporations,
 - (ii) that the shares of the corporation are listed on a recognized Canadian stock exchange and that Canadians will have an opportunity of participating in the financing and ownership of the corporation, or
 - (iii) that the shares of the corporation are wholly owned by a corporation that meets the qualifications outlined in subparagraph (i) or (ii) of this paragraph.

Transfer of Lease

- 73 (1) No oil and gas lease shall be transferred to
- (a) a person to whom the granting of an oil and gas lease is prohibited under subsection (a) of section 55; or
 - (b) to a corporation unless the corporation satisfies the Minister that persons who are Canadian citizens will have an opportunity of participating in the beneficial ownership of the corporation.

Definition

- (2) (1) (www) "significant discovery" means a discovery of oil or gas that, in the opinion of the Minister or a person designated by the Minister, justifies the drilling of any well or wells in addition to the well or wells in which the discovery was made;

120 (1) Where an application is made for a special renewal permit pursuant to section 116 or 117 for any Canada lands in respect of which no declaration of a significant discovery is in force at the time the application is made, Petro-Canada shall, on application therefor, have the right to be granted

- (a) where the Canadian participation rate of the applicant for the special renewal permit, determined pursuant to these Regulations, is twenty-five per cent or more but less than thirty-five per cent, a ten per cent interest in the special renewal permit to be granted to the applicant; and
- (b) where the Canadian participation rate of the applicant for the special renewal permit, determined pursuant to these Regulations, is less than twenty-five per cent, an additional interest in the permit, not exceeding fifteen per cent, of one per cent for every one per cent that the Canadian participation rate falls below twenty-five per cent.

120 (3) On receipt of an application for a special renewal permit for Canada lands on which no declaration of a significant discovery is in force, the Minister or a person designated by the Minister shall, in any case where the Canadian participation rate, determined pursuant to these Regulations, is less than thirty-five per cent, forthwith give notice in writing of the application to Petro-Canada specifying the area to which the application relates and the identity of the applicant.

120 (4) The Minister or a person designated by the Minister shall, as soon as possible, give notice in writing to Petro-Canada of the terms and conditions of the special renewal permit that have been agreed on.

120 (5) Within sixty days from the date of a notice given under subsection (4), Petro-Canada shall give notice in writing to the Minister or a person designated by the Minister stating whether or not it will exercise its rights under this section and, if so, to what extent.

120 (6) Where Petro-Canada fails to give the notice required under subsection (5) in the time provided therefor, its rights under this section are terminated with respect to the lands in question.

Canadian Participation Rate

122 In determining the Canadian participation rate of an applicant for a special renewal permit for the purposes of sections 120 and 121, the following Rules shall apply:

Rule 1 (1) If the applicant is

- (a) an individual who is a Canadian citizen ordinarily resident in Canada or a landed immigrant* within the meaning of the Immigration Act who is ordinarily resident in Canada other than a landed immigrant* who has been ordinarily resident in Canada for more than one year after the time at which he first became eligible to apply for Canadian citizenship, his Canadian participation rate is 100%;
- (b) an individual other than an individual referred to in paragraph (a), his Canadian participation rate is 0%;
- (c) a corporation that has been incorporated in Canada and is not a non-eligible person within the meaning of the Foreign Investment Review Act, its Canadian participation rate is 100%;
- (d) an enterprise formed by a group of individuals, corporations or individuals and corporations in which each beneficial owner of an interest is an individual referred to in paragraph (a) or a corporation referred to in paragraph (c), its Canadian participation rate is 100%;
- (e) a corporation that is a non-eligible person within the meaning of the Foreign Investment Review Act, or is an enterprise formed by a group of individuals, corporations, or individuals and corporations, other than an enterprise referred to in paragraph (d), its Canadian participation rate shall be determined by the application of Rule 2.

* Once the new Immigration Act, 1976 has been proclaimed there will be a consequential amendment whereby the term "permanent resident" will be substituted for the term "landed immigrant".

(2) Where the applicant would be the beneficial owner of the permit, if granted, this rule shall apply to that applicant, but where the applicant would not be the beneficial owner of the permit, if granted, this rule shall be applied to the person or enterprise that would be the beneficial owner of the permit as if that person or enterprise were the applicant and where in this manner a Canadian participation rate is determined for a beneficial owner, that Canadian participation rate shall be deemed to be the Canadian participation rate of the applicant for the purposes of section 120.

Rule 2 Where the application is made by a corporation or enterprise referred to in paragraph (e) of subrule (1), the Canadian participation rate in the corporation or enterprise is a percentage equal to the sum of the products obtained by multiplying, for each beneficial owner of voting shares of the corporation or of an interest in the enterprise, the Canadian participation rate for that owner under rule 3 or 4 by the percentage of the total number of voting shares of, or total interest in, the corporation or enterprise, beneficially owned by that owner.

Rule 3 For the purposes of Rule 2, any beneficial owner of voting shares in the applicant corporation, or of an interest in the applicant enterprise, that falls within any of the following classes shall be regarded as having a Canadian participation rate of 100%:

- (a) an individual referred to in paragraph (a) of subrule 1 (1),
- (b) a corporation referred to in paragraph (c) of subrule 1 (1),
- (c) an enterprise in which the majority interest is beneficially owned by individuals referred to in paragraph (a) or corporations referred to in paragraph (b) of this rule or any combination of such individuals and corporations,

and the Canadian participation rate for any beneficial owner not falling within any of the above classes is, except where rule 4 applies, 0%.

Rule 4 For the purposes of Rule 2, any non-eligible person within the meaning of the Foreign Investment Review Act, or any enterprise other than one referred to in rule 3 (c), that is a beneficial owner of voting shares in the applicant corporation, or any beneficial owner of an interest in the applicant enterprise where that applicant enterprise includes any persons who are non-eligible persons within the meaning of the Foreign Investment Review Act, shall have its Canadian

participation rate determined by treating it as if it were the applicant corporation or applicant enterprise under Rule 2 and applying Rule 3 in respect of any of its shareholders or interest owners falling within any of the classes set out in Rule 3, and this rule in respect of any of its shareholders or interest owners not falling within any of those classes.

Rule 5 (1) Where, under these Rules, the question arises whether or not a person is a non-eligible person within the meaning of the Foreign Investment Review Act, the Minister or a person designated by the Minister shall apply to the determination of that question the provisions of subsection 4 (1) and the other relevant provisions of the Foreign Investment Review Act, subject to such modifications as the circumstances may require, as if the person were an applicant for a statement in writing under that subsection, and as if the Minister or the person designated by the Minister were the Minister referred to in that Act.

(2) Any determination made by the Minister or the person designated by the Minister pursuant to subrule (1) is binding only on the person in respect of whom the determination was made, and on the Minister or the person designated by the Minister who made it, and only for the purposes of these Regulations.

Rule 6 (1) In these Rules,

"enterprise" means any group or combination of individuals, corporations or individuals and corporations and for greater certainty, but without restricting the generality of the foregoing, includes partnerships, joint ventures, trusts, syndicates or other associations;

"voting shares" means an issued and outstanding share of the capital stock of a corporation to which are attached voting rights ordinarily exercisable at meetings of shareholders,

(2) For the purposes of these Rules,

- (a) where any voting share carries the right to more than one vote, the share shall be deemed to be a number of shares equal to the number of votes that it carries;
- (b) the onus is on the applicant to demonstrate his Canadian participation rate to the satisfaction of the Minister or the person designated by the Minister;
- (c) the Canadian participation rate shall be determined as of a day not earlier than fifteen days prior to the day on which any application under section 116 or 117 is made for a special renewal permit;

- (d) where it is made to appear to the Minister that any matter required to be determined under these Rules cannot reasonably be determined thereunder in any case or class of cases, he may make the determination, or authorize it to be made, in accordance with such criteria as he considers reasonable in the circumstances; and
- (e) where, in applying Rule 4, it is found that the applicant corporation or enterprise is one of the beneficial shareholders or interest owners of the corporation or enterprise that is, for the purposes of that rule, being treated as if it were the applicant corporation or enterprise, the applicant corporation or enterprise shall be deemed not to own the shares or interest in question, and such shares or interest shall be regarded as not forming part of the issued shares of the corporation in question or of the interest in the enterprise in question, as the case may be.

NOTE: The Territorial Lands Act refers to lands in the Northwest Territories or in the Yukon Territory that are vested in the Crown including lands under water of which the Government of Canada has power to dispose. The Public Lands Grants Act refers to lands belonging to Her Majesty in right of Canada and includes lands of which the Government of Canada has power to dispose.

Source: "Territorial Lands Act, Public Lands Grants Act, Canada Oil and Gas Land Regulations; Canada Oil and Gas Drilling and Production Regulations", The Canada Gazette, Part II, Vol. 95, No. 12, SOR/61-253, P.C. 1961-797, p. 805-864, Queen's Printer, Ottawa, 1961.

"Territorial Lands Act, Public Lands Grants Act, Canada Oil and Gas Land Regulations", The Canada Gazette, Part II, Vol. 107, No. 1, SOR/73-13, P.C. 1972-3037, p. 64, Queen's Printer, Ottawa, 1973.

"Public Lands Grants Act, Territorial Lands Act, Canada Oil and Gas Land Regulations, amendment", The Canada Gazette, Part II, Vol. III, No. 16, SOR/77-666, P.C. 1977-2155, p. 3851, Queen's Printer, Ottawa, 1977.

NORTHERN MINERAL EXPLORATION ASSISTANCE REGULATIONS

SOR/66-404, P.C. 1966-1641

SOR/67-584, P.C. 1967-2223

The Northern Mineral Exploration Assistance Regulations are made under the Appropriation Act. The Regulations provide for grants for persons who intend to do exploratory work in Northern Canada.

Generally, to be eligible for assistance, the applicant must be either:

- (a) a Canadian citizen;
- (b) a Corporation, incorporated in Canada, with at least 50 percent of its shares beneficially owned by Canadians;
- (c) a Corporation incorporated in Canada, with its shares listed on a recognized Canadian stock exchange.

NORTHERN MINERAL EXPLORATION ASSISTANCE REGULATIONS

Grants for Exploratory Work in Northern Canada

3 (1) Upon the application therefor to the Minister by one or more persons described in subsection (2) who intend to do exploratory work on holdings in Northern Canada, the Minister may, subject to these Regulations, authorize the payment to such person or persons of a grant in respect of the program expenditure for that exploratory work.

3 (2) The persons referred to in subsection (1) are

(a) any individual who satisfies the Minister that he is

(i) a Canadian citizen not less than 21 years of age, and

(ii) entitled by reason of beneficial ownership or lease or option agreement to enter on the holdings in respect of which the application is made and conduct thereon a program of exploratory work;

(b) any corporation incorporated in Canada, other than a corporation described in paragraph (a) or (b) of subsection (3b) of section 83A of the Income Tax Act, that is either

(i) a private corporation whose issued and outstanding shares are beneficially owned

(A) by Canadian citizens,

(B) by one or more corporations described in subparagraph (ii), or

(C) partly by Canadian citizens and partly by one or more public corporations described in subparagraph (ii),

in a number that causes the total votes of the shares so owned to be not less than 50% of the total votes that could, under the voting rights attached to all the shares of the private corporation issued and outstanding, be voted by the holders thereof,

- (ii) a public corporation whose common shares are listed on a Canadian stock exchange or are offered for sale in Canada to the public through a Canadian securities dealer, or
 - (iii) a corporation whose issued and outstanding shares are beneficially owned by one or more public corporations incorporated in Canada (whose shares are listed on a Canadian stock exchange or are offered for sale in Canada to the public through a Canadian securities dealer) in a number that causes the total votes of the shares so owned to be not less than 50% of the total votes that could, under the voting rights attached to all the shares of the corporation issued and outstanding, be voted by the holders thereof; and
- (c) any corporation incorporated in Canada and described in paragraph (a) or (b) of subsection (3b) of section 83A of the Income Tax Act
- (i) that satisfies the Minister that, until the program of exploratory work in respect of which the application is made has been completed or discontinued, substantially all of its expenditures for exploratory work will, unless the Minister otherwise agrees, be made for exploratory work in Northern Canada,
 - (ii) whose issued and outstanding shares are not beneficially owned by one or more other corporations described in the said paragraph (a) or (b) of subsection (3b) of section 83A of the Income Tax Act in any number that would cause the total votes of the shares so owned to be in excess of 15% of the total votes that could, under the voting rights attached to all the shares of the corporation issued and outstanding, be voted by the holders thereof, and
 - (iii) that is a corporation described in subparagraph (i), (ii), or (iii) of paragraph (b).

Note: Northern Canada is defined to be:

"All that part of Canada north of a line following the sixtieth parallel north latitude from the boundary of Alaska to Hudson Bay, thence along the low water mark of Hudson Bay to Cape Fullerton, thence to Cape Kendall on Southampton Island, thence along the south shore of Southampton Island to Seahorse Point, thence to Lloyd Point on Foxe Peninsula, thence along the low water mark of the southern part of Baffin Island to the south-eastern tip of Baffin Island (including the adjacent islands), thence to the Savage Islands, thence to the northwest corner of Resolution Island, thence along the low water mark of the southern shore of Resolution Island to its southernmost point, and thence along parallel 61° 18' north latitude to the eastern most boundary of Canada."

Source: "Appropriation Acts". The Canada Gazette, Part II, Vol. 100, No. 17, SOR/66-404, P.C. 1966-1641, p. 1241-1251, Queen's Printer, Ottawa, 1966.

"Appropriation Act No. 9, 1966", The Canada Gazette, Part II, Vol. 101, No. 23, SOR/67-584, P.C. 1967-2223, p. 1816-1819, Queen's Printer, Ottawa, 1967.

THE FISHERIES ACT

R.S.C. 1970, c. F-14

A vessel, to carry on fishing operations from or to a Canadian port, must be registered in Canada and be owned by a British subject resident in Canada or by a body incorporated in Canada and having its principal place of business in Canada.

Section 7 gives to the Minister responsible for the Act absolute discretion in issuing leases or licences for fisheries or fishing in cases where the exclusive right of fishing does not already exist by law. With certain exceptions, leases or licences issued for a period exceeding 9 years are issued only on the authority of the Governor in Council.

It is the policy of the Minister not to issue any licences or leases to companies incorporated in Canada that are foreign owned or to individuals who are not Canadian citizens.

The regulations issued under the Fisheries Act vary depending on the province or area they cover. They govern, among other things, the issuance of fishing licenses for commercial purposes. Generally, these regulations stipulate that a fishing licence is not transferable and can only be issued to:

- (i) a person who is a Canadian citizen or who has served in the Canadian Forces; or
- (ii) a person lawfully admitted to Canada for permanent residence.

As these regulations are too numerous to reproduce, the interested reader is referred to the Fisheries and Marine Services Branch, Fisheries and Environment Canada for further information.

THE FISHERIES ACT

Fishery Leases and Licences

7 The Minister may, in his absolute discretion, wherever the exclusive right of fishing does not already exist by law, issue or authorize to be issued, leases and licences for fisheries or fishing, wherever situated or carried on; but except as hereinafter provided, leases or licences for any term exceeding nine years shall be issued only under authority of the Governor in Council. R.S., c. 119, s. 7.

8 Except where licence fees are prescribed in this Act, the Governor in Council may from time to time prescribe the fees that shall be charged for fishery licences. R.S., c. 119, s. 8.

9 The Minister may cancel any lease or licence issued under the authority of this Act, if he has ascertained that the operations under such licence were not conducted in conformity with its provisions. R.S., c. 119, s. 9.

Source: "Fisheries Act", Revised Statutes of Canada, 1970, Chapter F-14, Queen's Printer, Ottawa.

COASTAL FISHERIES PROTECTION ACT

R.S.C. 1970, c. C-21

Section 3 stipulates that no foreign fishing vessel will enter Canadian fisheries waters unless it is expressly authorized under the Coastal Fisheries Protection Act or the regulations, other laws of Canada, or a treaty.

There exists a series of regulations under the Coastal Fisheries Protection Act respecting fisheries which, among other things, authorize the Minister of Fisheries to grant licenses to foreign flag vessels. The terms and conditions stipulated in these regulations can vary depending on the province or area they cover. Generally, they, together with the Act, are aimed at ensuring that the fishing activities of foreign vessels do not undermine the activities of Canadian fishermen in Canadian waters.

As these regulations are too numerous to reproduce, the interested reader is referred to the Fisheries and Marine Services Branch, Fisheries and Environment Canada for further information.

COASTAL FISHERIES PROTECTION ACT

Foreign Fishing Vessels

3 (1) No foreign fishing vessel shall enter Canadian fisheries waters for any purpose unless authorized by

- (a) this Act or the regulations,
- (b) any other law of Canada, or
- (c) a treaty.

3 (2) No person, being aboard a foreign fishing vessel or being a member of the crew of or attached to or employed on a foreign fishing vessel shall in Canada or in Canadian fisheries waters

- (a) fish or prepare to fish,
- (b) unload, land or tranship any fish, outfit or supplies,
- (c) ship or discharge any crew member or other person,
- (d) purchase or obtain bait or any supplies or outfits, or
- (e) take or prepare to take marine plants, unless he is authorized to do so by
- (f) this Act or the regulations,
- (g) any other law of Canada, or
- (h) a treaty.

3 (3) No person, being aboard a Canadian fishing vessel, shall bring into Canadian fisheries waters fish received outside Canadian fisheries waters from a foreign fishing vessel, unless he is authorized to do so by the regulations. 1952-53, c. 15, s. 3; 1964-65, c. 22, s. 9

Regulations

4 The Governor in Council may make regulations

- (a) for authorizing, by means of licences, permits or otherwise,

- (i) foreign fishing vessels to enter Canadian fisheries waters for any purpose specified in the regulations, or
 - (ii) persons to do all or any of the things described in paragraphs 3(2)(a) to (e) or in subsection 3(3);
- (b) respecting the issue, suspension and cancellation of any licences or permits provided for under paragraph (a), prescribing their terms, conditions and forms and the fees payable therefor;
- (c) for appointing or authorizing persons to enforce the provisions of this Act and the regulations;
- (d) for securing and keeping any fishing vessels or things seized pursuant to this Act; and
- (e) generally for carrying out the purposes and provisions of this Act. 1952-53, c. 15, s. 4; 1964-65, c. 22, s. 9.

Source: "Coastal Fisheries Protection Act", Revised Statutes of Canada, 1970, Chapter 21, Queen's Printer, Ottawa

Part IV
SPECIAL ACT COMPANIES

THE CANADA DEVELOPMENT CORPORATION ACT

S.C. 1970-71-72, c. 49

The Canada Development Corporation was established to assist in the development of strong Canadian controlled and managed corporations in the private sector and to give Canadians greater opportunities to invest and participate in the economic development of Canada.

All of the directors of the Canada Development Corporation must be Canadian citizens. A majority of the directors must also be resident in Canada. Holders of voting shares must be either Canadian citizens or residents of Canada. No one person may hold, either individually or in conjunction with shareholders associated with him, more than 3 percent of the issued and outstanding voting shares of the company.

CANADA DEVELOPMENT CORPORATION ACT

Purpose of the Act

2 The purpose of this Act is to establish a corporation that will help develop and maintain strong Canadian controlled and managed corporations in the private sector of the economy and will give Canadians greater opportunities to invest and participate in the economic development of Canada.

Objects of the Company

6 (1) The objects of the company are:

- (a) to assist in the creation or development of businesses, resources, properties and industries of Canada;
- (b) to expand, widen and develop opportunities for Canadians to participate in the economic development of Canada through the application of their skills and capital;
- (c) to invest in the shares or securities of any corporation owning property or carrying on business related to the economic interests of Canada; and
- (d) to invest in ventures or enterprises, including the acquisition of property, likely to benefit Canada;

and shall be carried out in anticipation of profit and in the best interests of the shareholders as a whole.

Qualification of Directors

12 (1) Subject to section 86 of the Canada Corporations Act, any Canadian citizen is qualified to be a director of the company if he otherwise qualifies under such by-laws as may be made in that regard.

12 (2) A person ceases to be a director if he ceases to be a Canadian citizen.

12 (3) The majority of the members of the Board referred to in section 11 shall at all times be residents of Canada.

Restrictions on Share Ownership

20 (1) No person other than an individual who is a Canadian citizen or a person who is a resident of Canada may purchase, own or hold voting shares of the company.

20 (2) No person may hold shares of the company unless he is qualified to be a shareholder under this Act or the by-laws.

20 (3) The Board may prescribe rules for determining for the purposes of this Act when a person is not ordinarily resident in Canada.

SCHEDULE I

CONDITIONS AFFECTING THE ACQUISITION AND HOLDING OF VOTING SHARES

1 No person shall purchase or hold voting shares of the company in the right of or for the use or benefit of a non-resident, unless such non-resident is an individual who is a Canadian citizen.

Definitions

4 (1) For the purposes of these statutory conditions,

(c) "non-resident" means

- (i) an individual who is not ordinarily resident in Canada,
- (ii) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada,
- (iii) the government of a foreign state or any political subdivision thereof, or an agent of either,
- (iv) a corporation that is controlled directly or indirectly by non-residents as defined in this paragraph,

(v) a trust

(A) established by a non-resident as defined in any of subparagraphs (ii) to (iv) other than a trust for the administration of a pension fund for the benefit of individuals a majority of whom are residents, or

(B) in which non-residents as defined in any of subparagraphs (i) to (iv) have more than fifty percent of the beneficial interest,

(vi) a corporation, of which the majority of the directors, or persons occupying the position of directors by whatever name called, are non-residents as defined in subparagraph (i), or,

(vii) a corporation that is controlled directly or indirectly by a trust defined in this paragraph as a non-resident; and

(d) "resident" means an individual, corporation, trust or government that is not a non-resident.

3 For the purposes of these statutory conditions, where a share of the company is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident.

5 Where a corporation or trust that was at any time a resident becomes a non-resident, any shares of the company acquired by the corporation or the trust while it was a resident and held by it while it was a non-resident shall be deemed, for the purposes of these statutory conditions, to be shares held by a resident for the use or benefit of a non-resident.

Source: "Canada Development Corporation Act", Statutes of Canada 1970-71-72, Chapter 49, Queen's Printer, Ottawa

TELESAT CANADA ACT

R.S.C. 1970, c. T-4

The Telesat Canada Act establishes a corporation with the objective of providing, on a commercial basis, telecommunication services between locations in Canada. It is a policy of the corporation to use, to the extent practicable and consistent with its commercial nature, Canadian research, design, technology and other services in conjunction with the design, construction and administration of its telecommunication systems.

The directors of Telesat Canada must be Canadian citizens resident in Canada. All officers of the company must be Canadian citizens. Non-resident ownership of voting shares is limited to 20 per cent of the outstanding common shares held by persons other than Her Majesty in right of Canada, corporations declared by statute to be Her agents, and approved telecommunications common carriers. No common shares may be owned by a foreign government or its agents.

TELESAT CANADA ACT

Definition

2 In this Act,

"statutory conditions" refers to the conditions set out in Schedule II;

Objects of Telesat Canada

5 (1) The objects of the company are to establish satellite telecommunication systems providing, on a commercial basis, telecommunication services between locations in Canada.

5 (2) The company shall utilize, to the extent practicable and consistent with its commercial nature, Canadian research, design and industrial personnel, technology and facilities in research and development connected with its satellite telecommunication systems and in the design and construction of the systems. 1968-69, c. 51, s. 5.

Qualifications of Directors

13 (1) Subject to subsection 88(4) of the Canada Corporations Act, any Canadian citizen ordinarily resident in Canada is qualified to be a director of the company elected by the approved telecommunications common carriers who are holders of common shares of the company, and any Canadian citizen ordinarily resident in Canada who is

(a) not a member of the public service of Canada,
and

(b) not an officer or director of an approved telecommunications common carrier

is qualified to be a director of the company elected by the holders of common shares of the company who are persons who fulfil the statutory conditions.

13 (2) An elected director ceases to be a director if he ceases to be qualified to be elected a director of the company by the shareholders of the company by whom he was so elected.

Determining "ordinarily resident in Canada"

13 (4) The company may prescribe rules for determining for the purposes of this Act when a person ceases to be ordinarily resident in Canada. 1968-69, c. 51, s 13.

Qualifications of the Officers of the Company

16 (1) All officers of the company, including the president and any vice-presidents appointed pursuant to subsection 15(1), shall be Canadian citizens, and no such officer shall be in receipt of a salary from any source other than the company or be a director or shareholder of an approved telecommunications common carrier.

16 (2) An officer of the company who contravenes subsection (1) thereupon ceases to be an officer of the company. 1968-69, c. 51, s.16.

SCHEDULE II

Conditions affecting the acquisition and holding of common shares by persons other than Her Majesty in right of Canada, corporations declared by statute to be agents of Her Majesty in right of Canada and approved telecommunications common carriers

1 (1) Not more than twenty percent of the outstanding common shares of the company held by persons other than Her Majesty, in right of Canada, corporations declared by statute to be agents of Her Majesty in right of Canada and approved telecommunications common carriers may be held by non-residents.

1 (2) A resident shall not hold common shares of the company in the right of, or for the use or benefit of, a non-resident.

2 No common shares of the company shall be subscribed for, purchased or held in the name or right of, or for the use or benefit of,

(a) a director or officer of an approved telecommunications common carrier;

- (b) a corporation that is deemed for the purposes of these statutory conditions to be associated with an approved telecommunications common carrier; or
- (c) the government of a foreign state or any political subdivision thereof or an agent of the government of a foreign state or any political subdivision thereof.

3 The number of common shares of the company held in the name or right of or for the use or benefit of a person or Her Majesty in right of any province, together with the number of such shares held in the name or right of or for the use or benefit of

- (a) each shareholder associated with that person or Her Majesty in right of that province, and
- (b) each person who would be deemed under these statutory conditions to be associated with that person and that person or Her Majesty in right of that province were shareholders

may not exceed two and one-half percent of the outstanding common shares of the company.

Definitions

4 (1) For the purposes of these statutory conditions,

Agent

- (a) "agent" means, in relation to the government of a foreign state or any political subdivision thereof, a person empowered to perform a function or duty on behalf of the government of the foreign state or political subdivision other than a function or duty in connection with the administration or management of the estate or property of an individual;

Corporation

- (b) "corporation" includes an association, partnership or other organization;

Non-Resident

(c) "non-resident" means

- (i) an individual who is not ordinarily resident in Canada,
- (ii) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada,
- (iii) the government of a foreign state or any political subdivision thereof, or an agent of either,
- (iv) a corporation that is controlled directly or indirectly by non-residents as defined in any of subparagraphs (i) to (iii),
- (v) a trust
 - (A) established by a non-resident as defined in any of subparagraphs (ii) to (iv) other than a trust for the administration of a pension fund for the benefit of individuals a majority of whom are residents, or
 - (B) in which non-residents as defined in any of subparagraphs (i) to (iv) have more than fifty percent of the beneficial interest, or
- (vi) a corporation that is controlled directly or indirectly by a trust defined in subparagraph (v) as a non-resident; and

Resident

(d) "resident" means an individual, corporation, trust or government that is not a non-resident.

4 (2) For the purposes of these statutory conditions, a shareholder is, except as provided by section 5 of these statutory conditions, deemed to be associated with another shareholder if

- (a) one shareholder is a corporation of which the other shareholder is an officer or director;

- (b) one shareholder is a partnership of which the other shareholder is a partner;
- (c) one shareholder is a corporation that is controlled directly or indirectly by the other shareholder;
- (d) both shareholders are corporations and one shareholder is controlled directly or indirectly by the same government in Canada, foreign government or individual or corporation that controls the other shareholder;
- (e) both shareholders are members of a voting trust where the trust relates to shares of the company;
- (f) both shareholders are agents of Her Majesty in right of the same province or officials or corporations performing on behalf of Her Majesty in such right a function or duty in connection with the administration, management or investment of a fund established to provide compensation, hospitalization, medical care, annuity, pension or similar benefits to particular classes of individuals, or moneys derived from such a fund;
- (g) both shareholders are associated within the meaning of paragraphs (a) to (f) with the same shareholder; or
- (h) both shareholders are associated in any other manner declared by the by-laws to constitute them associated shareholders.

4 (3) For the purposes of these statutory conditions, a "shareholder" is a person other than Her Majesty in right of Canada, a corporation declared by statute to be an agent of Her Majesty in right of Canada or an approved telecommunications common carrier, who according to the books of the company is the holder of one or more common shares of the company and a reference in these statutory conditions to a share being held by or in the name of any person is a reference to his being the holder of the share according to the books of the company.

4 (4) For the purposes of these statutory conditions, a corporation is deemed to be associated with an approved telecommunications common carrier, if, in circumstances where both the corporation and the approved telecommunication common carrier were shareholders, the corporation would be deemed to be a shareholder associated with the approved telecommunication common carrier.

4 (5) For the purposes of these statutory conditions where a share of the company is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident.

4 (6) Where a corporation or trust that was at any time a resident becomes a non-resident, any shares of the company acquired by the corporation or the trust while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of these statutory conditions, to be shares held by a resident for the use or benefit of a non-resident.

5 Notwithstanding paragraphs 4(2)(a) to (g) of these statutory conditions,

- (a) where one shareholder who is a resident and who, but for this paragraph, would be deemed to be associated with another shareholder submits to the company a declaration stating that none of the shares of the company held by him or to be held by him is or will be, to his knowledge, held in the right of, or for the use or benefit of, himself or any resident with whom, but for this paragraph, he would be deemed to be associated, neither shareholder is deemed to be associated with the other so long as the shares of the company from time to time held by the shareholder who made the declaration are not held contrary to the statements made in the declaration;
- (b) two shareholders that are corporations and residents shall not be deemed to be associated with each other by virtue of subparagraph 4(2)(f) of these statutory conditions by reason only that each is deemed under paragraph 4(2)(a) to be associated with the same shareholder; and
- (c) where it appears from the register of shareholders of the company that not more than five hundred common shares of the company are held by a shareholder, he shall not be deemed to be associated with any other shareholder and no other shareholder shall be deemed to be associated with him. 1968-69, c. 51, Sch. B.

Source: "Telesat Canada Act" Revised Statutes of Canada 1970, Chapter T-4, Queen's Printer, Ottawa, 1970.

Part VIII

OTHER

THE REGIONAL DEVELOPMENT INCENTIVES REGULATIONS

SOR/76-283, P.C. 1976-969

The Regional Development Incentives Act (R.S.C. 1970, c. R-3) was enacted to provide incentives for the development of productive employment opportunities in regions of Canada determined to require special measures to facilitate economic expansion and social adjustment. It provides for incentives to support the establishment, modernization, or expansion of manufacturing or processing facilities, as well as certain types of commercial facilities.

Regulations made under the Regional Development Incentives Act stipulate that a person, who is a non-eligible person as defined in the Foreign Investment Review Act, is not eligible for a development incentive unless that person has complied with the requirements of the Foreign Investment Review Act.

REGIONAL DEVELOPMENT INCENTIVES REGULATIONS

Eligibility for Incentive

3.1 The Minister shall not authorize a development incentive or loan guarantee to a person who is a non-eligible person as defined in the Foreign Investment Review Act unless that person has complied with the requirements of that Act.

Source: "Regional Development Incentive Act", The Canada Gazette, Part II, Vol. 110, No. 9, SOR/76-283, P.C. 1976-969;
p. 1427, Queen's Printer, Ottawa, 1976.

WESTERN GRAIN STABILIZATION ACT

S.C. 1974-75-76, c. 87

The Western Grain Stabilization Act provides for stabilization payments to grain producers. To be eligible for the stabilization payments the producer must be:

- (a) a Canadian citizen or a landed immigrant*, or
- (b) a corporation more than 50 percent of whose shares are owned by Canadian citizens or landed immigrants*.

* Once the New Immigration Act, 1976 has been proclaimed there will be a consequential amendment whereby the term "permanent resident" will be substituted for the term "landed immigrant".

WESTERN GRAIN STABILIZATION ACT

Participation Under Act

3 Every actual producer who is a participant under this Act in respect of the grain sale proceeds for the grain produced on the land described in his permit book is entitled to receive stabilization payments in accordance with this Act.

Eligibility to Participate

7 (1) A person is eligible to participate under this Act only if he is an actual producer and

- (a) he is a Canadian citizen or a landed immigrant* within the meaning of the Immigration Act; or
- (b) in the case of a corporation, more than fifty percent of the shares of the corporation are owned by persons referred to in paragraph (a).

Order Declaring Ineligibility

7 (2) The Minister may require any actual producer to provide evidence that he is eligible to participate under this Act and, if the actual producer fails to satisfy the Minister that he is so eligible, the Minister

- (a) may, by order, declare that the actual producer is not eligible to participate under this Act; and
- (b) shall thereupon, in writing, notify the actual producer of his decision.

7 (3) Subject to subsection 28 (2), where an order is made under subsection (2) of this section or subsection 28 (1), or on an appeal taken under section 29, declaring that an actual producer is not eligible to participate under this Act, the actual producer

- (a) shall thereupon be deemed to have ceased to be eligible to participate under this Act effective on the later of the first day of the year in which

* Once the new Immigration Act, 1976 has been proclaimed there will be a consequential amendment whereby the term "permanent resident" will be substituted for the term "landed immigrant".

the order is made and the day on which this Act comes into force; and

- (b) continues not to be eligible to participate under this Act until the effective date of an order, made under subsection 28 (1) or on an appeal taken under 29, declaring him to be eligible to so participate.

Order Re-establishing Eligibility

7 (4) Subject to subsection 28 (2), where

- (a) an actual producer has been declared not to be eligible to participate under this Act by an order made under subsection (2) of this section or subsection 28 (1), or on an appeal taken under section 29,
- (b) the actual producer subsequently satisfies the Commission, or the Federal Court of Canada on an appeal taken under section 29, that he is at the subsequent time eligible to participate under this Act, and
- (c) the Commission or Court so orders,

the actual producer shall thereupon be deemed to be an eligible actual who has made an election under subsection 5 (2) to participate under this Act effective on the first day of the year immediately following the year in which the order is made.

Source: "An Act respecting the stabilization of net proceeds from the production and sale of western grain and to amend certain statutes in consequence thereof", Statutes of Canada, 1974-75-76, Chapter 87; Queen's Printer. Ottawa.



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Gouvernement
Public



OFFICE CONSOLIDATION

CODIFICATION ADMINISTRATIVE

Foreign Investment Review Act

Loi sur l'examen de l'investissement étranger

S.C., 1973-74, c. 46

amended by

1976-77, c. 52

S.C., 1973-74, c. 46

modifiée par

1976-77, c. 52

1977

NOTE

All persons making use of this consolidation are reminded that it has no parliamentary sanction; that the amendments have been embodied only for convenience of reference, and that the original Act and amendments thereto should be consulted for all purposes of interpreting and applying the law.

REMARQUE

Nous rappelons aux lecteurs que cette codification n'a pas été soumise à la sanction du Parlement. Les modifications n'ont été incorporées à la loi que pour en faciliter la consultation. Pour interpréter et appliquer la loi, il faut se reporter aux textes tels qu'ils ont été adoptés par le Parlement.



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CHAPTER 46

An Act to provide for the review and assessment of acquisitions of control of Canadian business enterprises by certain persons and of the establishment of new businesses in Canada by certain persons

[Assented to 12th December, 1973]

SHORT TITLE

Short title

1. This Act may be cited as the *Foreign Investment Review Act*. 1973-74, c. 46, s. 1.

PURPOSE OF ACT

Purpose of Act

2. (1) This Act is enacted by the Parliament of Canada in recognition by Parliament that the extent to which control of Canadian industry, trade and commerce has become acquired by persons other than Canadians and the effect thereof on the ability of Canadians to maintain effective control over their economic environment is a matter of national concern, and that it is therefore expedient to establish a means by which measures may be taken under the authority of Parliament to ensure that, in so far as is practicable after the enactment of this Act, control of Canadian business enterprises may be acquired by persons other than Canadians, and new businesses may be established in Canada by persons, other than Canadians, who are not already carrying on business in Canada or whose new businesses in Canada would be unrelated to the businesses already being carried on by them in Canada, only if it has been assessed that the acquisition of control of those enterprises or the establishment of those new businesses, as the case may be, by those persons is or is likely to be of significant benefit to Canada, having regard to all of the factors to

CHAPITRE 46

Loi prévoyant l'examen et l'appréciation des prises de contrôle d'entreprises commerciales canadiennes par certaines personnes et ceux de la création, par certaines personnes, d'entreprises nouvelles au Canada

[Sanctionnée le 12 décembre 1973]

TITRE ABRÉGÉ

1. La présente loi peut être citée sous le titre: *Loi sur l'examen de l'investissement étranger*. 1973-74, c. 46, art. 1. Titre abrégé

OBJET DE LA LOI

Objet de la loi

2. (1) La présente loi est édictée par le Parlement du Canada parce que celui-ci reconnaît que la mesure dans laquelle le contrôle de l'industrie et du commerce canadiens est passé aux mains de personnes autres que des Canadiens et l'effet de ce contrôle sur la capacité, pour les Canadiens, de conserver le contrôle effectif de leur milieu économique sont des sujets de préoccupation nationale et qu'il est donc opportun de créer un moyen de prendre, sous l'autorité du Parlement, des mesures visant à faire en sorte, dans la mesure où cela sera matériellement possible après l'adoption de la présente loi, que le contrôle des entreprises commerciales canadiennes ne puisse passer aux mains de personnes autres que des Canadiens et que des entreprises nouvelles ne puissent être créées au Canada par des personnes, autres que des Canadiens, qui n'exploitent pas déjà des entreprises au Canada ou dont les entreprises nouvelles au Canada n'auraient aucun rapport avec celles qu'ils y exploitent déjà, que s'il a été apprécié que l'acquisition du contrôle de ces entreprises ou la création de ces entreprises nouvelles par ces personnes, selon le cas,

be taken into account under this Act for that purpose.

Factors to be taken into account in assessment

(2) In assessing, for the purposes of this Act, whether any acquisition of control of a Canadian business enterprise or the establishment of any new business in Canada is or is likely to be of significant benefit to Canada, the factors to be taken into account are as follows:

- (a) the effect of the acquisition or establishment on the level and nature of economic activity in Canada, including, without limiting the generality of the foregoing, the effect on employment, on resource processing, on the utilization of parts, components and services produced in Canada, and on exports from Canada;
 - (b) the degree and significance of participation by Canadians in the business enterprise or new business and in any industry or industries in Canada of which the business enterprise or new business forms or would form a part;
 - (c) the effect of the acquisition or establishment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada;
 - (d) the effect of the acquisition or establishment on competition within any industry or industries in Canada; and
 - (e) the compatibility of the acquisition or establishment with national industrial and economic policies, taking into consideration industrial and economic policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the acquisition or establishment.
- 1973-74, c. 46, s. 2.

apporte ou est susceptible d'apporter des avantages appréciables au Canada, compte tenu de l'ensemble des facteurs devant être pris en considération à cette fin en vertu de la présente loi.

(2) Lorsqu'il s'agit d'apprécier, aux fins de la présente loi, si l'acquisition du contrôle d'une entreprise commerciale canadienne ou la création d'une entreprise nouvelle au Canada apporte ou est susceptible d'apporter des avantages appréciables au Canada, les facteurs qui doivent être pris en considération sont les suivants:

- a) l'effet de l'acquisition ou de la création sur le niveau et la nature de l'activité économique au Canada, y compris, sans limiter la portée générale de ce qui précède, l'effet sur l'emploi, la transformation des ressources, l'utilisation de pièces et d'éléments produits et de services rendus au Canada et sur les exportations en provenance du Canada;
 - b) l'étendue et l'importance de la participation de Canadiens dans cette entreprise commerciale ou cette entreprise nouvelle et dans l'une ou plusieurs des industries canadiennes dont cette entreprise commerciale ou cette entreprise nouvelle fait ou ferait partie;
 - c) l'effet de l'acquisition ou de la création sur la productivité, le rendement industriel, les progrès techniques, la création de produits nouveaux et la variété des produits au Canada;
 - d) l'effet de l'acquisition ou de la création sur la concurrence dans une ou plusieurs industries au Canada; et
 - e) la compatibilité de l'acquisition ou de la création avec les politiques nationales en matière industrielle et économique, compte tenu des objectifs de politique économique et industrielle qu'ont énoncés le gouvernement ou la législature de quelque province, sur lesquels l'acquisition ou la création est susceptible d'avoir des incidences appréciables.
- 1973-74, c. 46, art. 2.

Facteurs devant être pris en considération lors de l'appréciation

INTERPRETATION	
Definitions	3. (1) In this Act,
"actual investment"	"actual investment" has the meaning given that expression in paragraph 8(3)(b);
"investissement effectif"	
"Agency"	"Agency" means the Foreign Investment Review Agency established by subsection 7(1);
"Agence"	

INTERPRÉTATION	
Définitions	3. (1) Dans la présente loi
«actions»	«actions» désigne, en ce qui concerne une corporation, les actions composant le capital de celle-ci;
«shares»	
«Agence»	«Agence» désigne l'Agence d'examen de l'investissement étranger, créée en application du paragraphe 7(1);
«Agency»	

«business» «entreprise»	«business» includes any undertaking or enterprise carried on in anticipation of profit;	«biens» utilisés pour l'exploitation d'une entreprise comprend notamment la clientèle qui s'y attache;	«biens» «property»
«Canadian branch business» «succursale...»	«Canadian branch business» means a business carried on in Canada by a corporation incorporated elsewhere than in Canada that maintains one or more establishments in Canada to which employees of the corporation employed in connection with the business ordinarily report for work;	«Commissaire» désigne le commissaire de l'Agence d'examen de l'investissement étranger nommé en application du paragraphe 7(2);	«commissaire» «Commissioner»
«Canadian business» «entreprise canadienne»	«Canadian business» means a business carried on in Canada by (a) an individual who is either a Canadian citizen or a person ordinarily resident in Canada, (b) a corporation incorporated in Canada that maintains one or more establishments in Canada to which employees of the corporation employed in connection with the business ordinarily report for work, or (c) any number of individuals or corporations or combination of individuals and corporations, if any one or more of those comprising that number or combination are either individuals described in paragraph (a) or corporations described in paragraph (b) who, either alone or jointly or in concert with one or more other individuals or corporations so described, control or are in a position to control the conduct of the business;	«corporation» désigne une corporation ayant un capital social ou n'ayant pas de capital social; «entreprise» désigne toute activité ou affaire commerciale exploitée dans un but lucratif; «entreprise canadienne» désigne une entreprise exploitée au Canada a) par un particulier qui est soit un citoyen canadien, soit une personne résidant habituellement au Canada, b) par une corporation constituée au Canada, qui y a un ou plusieurs établissements auxquels ses employés affectés à l'entreprise se présentent habituellement pour travailler, ou c) par un nombre quelconque de particuliers ou de corporations ou groupe de particuliers et de corporations, si l'un ou plusieurs de ceux qui forment ce nombre ou ce groupe sont soit des particuliers visés à l'alinéa a), soit des corporations visées à l'alinéa b) qui, soit seuls, soit en commun ou de concert avec un ou plusieurs autres particuliers ou corporations visés à l'un ou l'autre de ces alinéas, contrôlent ou sont en mesure de contrôler la conduite de l'entreprise;	«corporation» «corporation» «entreprises» «business» «entreprise canadienne» «Canadian business»
«Canadian business enterprise» «entreprise commerciale...» «Commissioner» «commissaire»	«Canadian business enterprise» means a business that is either a Canadian business or a Canadian branch business; «Commissioner» means the Commissioner of the Foreign Investment Review Agency appointed pursuant to subsection 7(2);	«entreprise commerciale canadienne» désigne une entreprise qui est soit une entreprise canadienne, soit une succursale canadienne d'une entreprise;	«entreprise commerciale canadienne» «Canadian... enterprise»
«corporation» «corporation»	«corporation» means a body corporate with or without share capital;	«entreprise nouvelle» désigne une entreprise que la personne ou le groupe de personnes au sujet desquels cette expression est employée n'exploitait pas auparavant au Canada;	«entreprise nouvelle» «new business»
«investment» «investissement»	«investment», except where the context otherwise requires, means a proposed investment or actual investment;	«investissement» signifie, sauf lorsque le contexte impose une autre signification, un investissement proposé ou un investissement effectif;	«investissement» «investment»
«Minister» «Ministre»	«Minister» means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council to act as the Minister for the purposes of this Act;	«investissement effectif» a le sens qu'attribue à cette expression l'alinéa 8(3)b); «investissement proposé» a le sens qu'attribue à cette expression l'alinéa 8(3)a);	«investissement effectif» «actual investment» «investissement proposé» «proposed investment»
«new business» «entreprise nouvelle»	«new business» means a business not previously carried on in Canada by the person or group of persons in relation to which the expression is relevant;		
«non-eligible person» «personne non admissible»	«non-eligible person» means		

*(a) an individual who is neither a Canadian citizen nor a permanent resident within the meaning of the *Immigration Act, 1976* and includes

(i) a Canadian citizen who is not ordinarily resident in Canada and who is a member of a class of persons prescribed by regulation for the purposes of this definition, and

(ii) a permanent resident who has been ordinarily resident in Canada for more than one year after the time at which he first became eligible to apply for Canadian citizenship,

(b) the government of a country other than Canada or of a political subdivision of a country other than Canada, or an agency of such a government; or

(c) a corporation incorporated in Canada or elsewhere that is controlled, in any manner that results in control in fact, whether directly through the ownership of shares or indirectly through a trust, a contract, the ownership of shares of any other corporation or otherwise, by a person described in paragraph (a) or (b) or by a group of persons any member of which is a person described in paragraph (a) or (b);

"party"
«partie»

"party", in relation to any proposal to acquire control of a Canadian business enterprise, includes any person by whom the Canadian business enterprise is then carried on or from whom control thereof is proposed to be acquired;

"person"
«personne»

"person" includes a government or agency described in paragraph (b) of the definition "non-eligible person" in this subsection, and a corporation wherever incorporated;

"property"
«biens»

"property" used in carrying on a business includes goodwill in connection therewith;

"proposed investment"
«investissement proposé»

"proposed investment" has the meaning given that expression in paragraph 8(3)(a);

"shares"
«actions»

"shares" in relation to a corporation means shares of the capital stock of the corporation.

«Ministre» désigne un membre du Conseil privé de la Reine pour le Canada que le gouverneur en conseil désigne pour agir en qualité de ministre aux fins de la présente loi;

«Ministre»
"Minister"

«partie», relativement à toute proposition d'acquisition du contrôle d'une entreprise commerciale canadienne, comprend toute personne qui exploite à ce moment cette entreprise commerciale canadienne ou de laquelle on propose d'acquérir le contrôle de celle-ci;

«partie»
"party"

«personne» comprend notamment un gouvernement ou un organisme visés à l'alinéa b) de la définition de «personne non admissible» donnée au présent paragraphe, ainsi qu'une corporation, où qu'elle ait été constituée;

«personne»
"person"

«personne non admissible» désigne

«personne non admissible»
"non-eligible..."

*a) un particulier qui n'est pas un citoyen canadien ni un résident permanent au sens de la *Loi sur l'immigration de 1976* et comprend

(i) un citoyen canadien qui ne réside pas habituellement au Canada et qui fait partie d'une catégorie de personnes prescrite par règlement aux fins de la présente définition, et

(ii) un résident permanent qui a résidé habituellement au Canada pendant plus d'une année à compter de la date où il est devenu pour la première fois admissible à demander la citoyenneté canadienne,

b) le gouvernement d'un pays autre que le Canada ou une subdivision politique d'un tel pays, ou un organisme d'un tel gouvernement, ou

c) une corporation constituée au Canada ou ailleurs qui est, d'une manière qui aboutit à un contrôle de fait, que ce soit directement par l'intermédiaire de la propriété de ses actions ou indirectement par l'intermédiaire d'une fiducie, d'un contrat, de la propriété des actions de quelque autre corporation ou autrement, sous le contrôle d'une personne visée à l'alinéa a) ou b) ou d'un groupe de personnes dont un membre est une personne visée aux alinéas a) ou b);

«succursale canadienne d'une entreprise» désigne une entreprise exploitée au Canada par une corporation constituée ailleurs qu'au

«succursale canadienne d'une entreprise»
"Canadian... business"

*Note: To be proclaimed. (1976-77, c. 52, s. 129)

*Nota: Proclamation à venir. (1976-77, c. 52, art. 129)

Presumption as
to non-eligible
persons

(2) Where, in the case of a corporation incorporated in Canada or elsewhere,

(a) shares of the corporation to which are attached

(i) 25% or more of the voting rights ordinarily exercisable at meetings of shareholders of the corporation, in the case of a corporation the shares of which are publicly traded, or

(ii) 40% or more of the voting rights ordinarily exercisable at meetings of shareholders of the corporation, in the case of a corporation the shares of which are not publicly traded,

are owned by one or more individuals described in paragraph (a) of the definition "non-eligible person" in subsection (1), by one or more governments or agencies described in paragraph (b) of that definition or by one or more corporations incorporated elsewhere than in Canada, or any combination of such persons, or

(b) shares of the corporation to which are attached 5% or more of the voting rights ordinarily exercisable at meetings of shareholders of the corporation are owned by any one individual described in paragraph (a) of the definition "non-eligible person" in subsection (1), by any one government or agency described in paragraph (b) of that definition or by any one corporation incorporated elsewhere than in Canada,

the corporation is, unless the contrary is established, a non-eligible person.

Acquisition of
control

(3) For the purposes of this Act,

(a) control of a Canadian business enterprise may only be acquired,

(i) in the case of a Canadian business enterprise that is a Canadian business carried on by a corporation either alone or jointly or in concert with one or more other persons,

(A) by the acquisition of shares of the corporation to which are attached voting rights ordinarily exercisable at meetings of shareholders of the corporation, or

Canada, qui a au Canada un ou plusieurs établissements auxquels les employés de la corporation affectés à l'entreprise se présentent habituellement pour travailler.

(2) Lorsque, dans le cas d'une corporation constituée au Canada ou ailleurs,

a) sur les actions de la corporation assorties du droit de vote qui peut être ordinairement exercé aux assemblées des actionnaires de la corporation

(i) 25% ou plus desdites actions, s'il s'agit d'une corporation dont les actions sont librement négociables, ou

(ii) 40% ou plus desdites actions, s'il s'agit d'une corporation dont les actions ne sont pas librement négociables,

appartiennent à un ou plusieurs particuliers visés à l'alinéa a) de la définition de «personne non admissible» donnée au paragraphe (1), à un ou plusieurs gouvernements ou organismes visés à l'alinéa b) de cette définition, à une ou plusieurs corporations constituées ailleurs qu'au Canada, ou à un groupe constitué de telles personnes, ou

b) 5% ou plus des actions de la corporation, assorties du droit de vote qui peut être ordinairement exercé aux assemblées des actionnaires de la corporation, appartenant à un particulier visé à l'alinéa a) de la définition de «personne non admissible» donnée au paragraphe (1), à un gouvernement ou organisme visé à l'alinéa b) de cette définition, ou à une corporation constituée hors du Canada, la corporation est, jusqu'à preuve du contraire, une personne non admissible.

Personnes
présümées non
admissibles

(3) Aux fins de la présente loi,

a) le contrôle d'une entreprise commerciale canadienne ne peut être acquis,

(i) s'il s'agit d'une entreprise commerciale canadienne qui est une entreprise canadienne exploitée par une corporation soit seule, soit en commun ou de concert avec une ou plusieurs autres personnes,

(A) que par l'acquisition d'actions de la corporation assorties du droit de vote qui peut être ordinairement exercé aux assemblées des actionnaires de la corporation, ou

Acquisition du
contrôle

- (B) by the acquisition of all or substantially all of the property used in carrying on the business in Canada, and
- (ii) in the case of any other Canadian business enterprise, by the acquisition of all or substantially all of the property used in carrying on the business in Canada;
- (b) control of a Canadian business enterprise that is a Canadian business carried on by a corporation either alone or jointly or in concert with one or more other persons is not acquired by reason only of
 - (i) the acquisition by any person or group of persons of shares of the corporation to which are attached
 - (A) less than 5% of the voting rights ordinarily exercisable at meetings of shareholders of the corporation, in the case of a corporation the shares of which are publicly traded, or
 - (B) less than 20% of the voting rights ordinarily exercisable at meetings of shareholders of the corporation, in the case of a corporation the shares of which are not publicly traded,
 - (ii) the acquisition of shares of the corporation by any person in the ordinary course of that person's business as a trader or dealer in securities,
 - (iii) the acquisition of shares of the corporation by any person in the ordinary course of a business carried on by that person that consists of providing, in Canada, venture capital upon terms and conditions not inconsistent with such terms and conditions as may be prescribed by the Minister for the purposes of this subparagraph in relation to any such business, or
 - (iv) the acquisition of control of the corporation by another corporation (in this subparagraph referred to as the "controller"), where it is established that
 - (A) there is in effect an agreement or arrangement, enforceable according to the terms thereof, under which upon the satisfaction of a condition or the happening of an event that it is reasonable to expect will be satisfied or will happen, the corporation will
 - (I) cease to be controlled by the controller, and
 - (II) become controlled by a person or group of persons, with whom or with

- (B) que par l'acquisition de la totalité ou de la presque totalité des biens utilisés pour l'exploitation de l'entreprise au Canada, et
- (ii) s'il s'agit de quelque autre entreprise commerciale canadienne, que par l'acquisition de la totalité ou de la presque totalité des biens utilisés pour l'exploitation de l'entreprise au Canada;
- b) le contrôle d'une entreprise commerciale canadienne qui est une entreprise canadienne exploitée par une corporation soit seule, soit en commun ou de concert avec une ou plusieurs autres personnes, ne s'acquiert pas du seul fait
 - (i) de l'acquisition, par une personne ou un groupe de personnes,
 - (A) de moins de 5% des actions de la corporation assorties du droit de vote qui peut être ordinairement exercé aux assemblées des actionnaires de la corporation, s'il s'agit d'une corporation dont les actions sont librement négociables, ou
 - (B) de moins de 20% des actions de la corporation assorties du droit de vote qui peut être ordinairement exercé aux assemblées des actionnaires de la corporation, s'il s'agit d'une corporation dont les actions ne sont pas librement négociables,
 - (ii) de l'acquisition d'actions de cette corporation qu'effectue toute personne dans le cours ordinaire de son entreprise de négociant ou de courtier en valeurs,
 - (iii) de l'acquisition d'actions de cette corporation qu'effectue toute personne dans le cours ordinaire d'une entreprise qu'elle exploite et qui consiste à procurer, au Canada, des capitaux spéculatifs selon des modalités qui ne sont pas incompatibles avec celles que peut prescrire le Ministre aux fins du présent sous-alinéa relativement à toute entreprise de cette nature, ou
 - (iv) de l'acquisition du contrôle de cette corporation par une autre corporation, (appelée dans le présent sous-alinéa «corporation contrôlante»), lorsqu'il est établi
 - (A) qu'un accord ou une entente en vigueur, exécutable selon ses modalités, prévoit que lors de la réalisation d'une condition ou de la survenance d'un événement, réalisation ou survenance qu'il

each of the members of which, as the case may be, the controller is dealing at arm's length, and

(B) the control was acquired for the purpose of safeguarding the rights or interests of the controller in respect of

(I) a loan made by him, the whole or any part of which is outstanding, or

(II) any shares of the corporation that are owned by him and that are, under the agreement or arrangement, to be redeemed by the corporation or purchased by the person or group of persons referred to in subclause (A)(II),

and not for any purpose related to the provisions of this Act;

(c) the acquisition by any person or group of persons of shares of a corporation to which are attached

(i) 5% or more of the voting rights ordinarily exercisable at meetings of shareholders of the corporation, in the case of a corporation the shares of which are publicly traded, or

(ii) 20% or more of the voting rights ordinarily exercisable at meetings of shareholders of the corporation, in the case of a corporation the shares of which are not publicly traded,

shall, unless the contrary is established, be deemed to constitute the acquisition of control of any business carried on by the corporation;

(d) the acquisition by any person or group of persons of shares of a corporation to which are attached more than 50% of the voting rights ordinarily exercisable at meetings of shareholders of the corporation, whether or not the shares of the corporation are publicly traded, shall, unless the person or group of persons acquiring the shares had, at the time of the acquisition, control in fact of the corporation, be deemed to constitute the acquisition of control of any business carried on by the corporation other than any such business carried on, for a purpose not related to the provisions of this Act, by it jointly or in concert with one or more other persons; and

(e) an amalgamation of two or more corporations the effect of which is to continue the amalgamating corporations as one corporation (in this paragraph called the "amal-

est raisonnable de prévoir, la corporation

(I) cessera d'être sous le contrôle de la corporation contrôlante, et

(II) passera sous le contrôle d'une personne ou d'un groupe de personnes avec laquelle ou avec chacun des membres duquel, selon le cas, la corporation contrôlante traite sans lien de dépendance, et

(B) que le contrôle a été acquis aux fins de sauvegarder les droits ou les intérêts de la corporation contrôlante en ce qui concerne

(I) un prêt qu'elle a consenti et qui reste dû en totalité ou en partie, ou

(II) des actions de la corporation qui lui appartiennent et qu'en vertu de l'accord ou de l'entente, cette corporation doit racheter ou que la personne ou le groupe de personnes dont il est question dans la sous-disposition

(A)(II) doit acquérir,

et non à une fin quelconque se rattachant aux dispositions de la présente loi;

c) l'acquisition, par quelque personne ou groupe de personnes,

(i) de 5% ou plus des actions d'une corporation assorties du droit de vote qui peut être ordinairement exercé aux assemblées des actionnaires de la corporation, s'il s'agit d'une corporation dont les actions sont librement négociables, ou

(ii) de 20% ou plus des actions d'une corporation assorties du droit de vote qui peut être ordinairement exercé aux assemblées des actionnaires de la corporation, s'il s'agit d'une corporation dont les actions ne sont pas librement négociables,

est, jusqu'à preuve du contraire, réputée constituer l'acquisition du contrôle de toute entreprise exploitée par la corporation;

d) l'acquisition, par quelque personne ou groupe de personnes, de plus de 50% des actions d'une corporation assorties du droit de vote qui peut être ordinairement exercé aux assemblées des actionnaires de la corporation, que les actions de la corporation soient librement négociables ou non, est réputée, à moins que la personne ou le groupe de personnes qui ont acquis les actions n'aient, au moment de l'acquisition, exercé un contrôle de fait sur la corporation,

gamated corporation") shall be deemed, except in the case of an amalgamation that is part of a corporate reorganization that is carried out for a purpose not related to the provisions of this Act and that results in the amalgamated corporation being controlled by the same person or group of persons that controlled each of the amalgamating corporations, to constitute the acquisition of control by the amalgamated corporation of the businesses carried on by the amalgamating corporations other than any business carried on, for a purpose not related to the provisions of this Act, by an amalgamating corporation jointly or in concert with one or more other persons who are not amalgamating corporations; and

(f) in determining whether an acquisition of control of a Canadian business enterprise or the establishment of a new business in Canada by a person or persons as a trustee or trustees is an acquisition or establishment by a non-eligible person or by a group of persons a member of which is a non-eligible person, the acquisition shall be deemed to have been made or the business shall be deemed to have been established, as the case may be, by a corporation of which

(i) the persons having a beneficial interest in the trust, and

(ii) the trustees of the trust,

shall be deemed to be the shareholders and the members of the board of directors, respectively.

constituer l'acquisition du contrôle de toute entreprise exploitée par la corporation, à l'exclusion de toute entreprise exploitée, dans un but sans rapport avec les dispositions de la présente loi, par elle en commun ou de concert avec une ou plusieurs autres personnes; et

e) la fusion de deux ou plusieurs corporations, qui a pour résultat que les corporations qui fusionnent continuent leur activité comme une seule et même corporation (appelée dans le présent alinéa «corporation fusionnée») doit être réputée, sauf dans le cas d'une fusion effectuée dans le cadre de la réorganisation d'une corporation, qui est menée dans un but sans rapport avec les dispositions de la présente loi et qui aboutit à donner le contrôle de la corporation fusionnée à la personne ou au groupe de personnes qui contrôlait chacune des corporations qui fusionnent, constituer l'acquisition, par la corporation fusionnée, du contrôle des entreprises qu'exploitaient les corporations qui fusionnent, à l'exception de toute entreprise qu'exploitait, dans un but sans rapport avec les dispositions de la présente loi, une des corporations qui fusionnent en commun ou de concert avec une ou plusieurs autres personnes qui ne sont pas des corporations qui fusionnent; et

f) en déterminant si l'acquisition du contrôle d'une entreprise commerciale canadienne ou la création d'une entreprise nouvelle au Canada par une ou plusieurs personnes en leur qualité de fiduciaires constitue une acquisition ou création par une personne non admissible ou par un groupe de personnes dont un membre est une personne non admissible, l'acquisition est réputée avoir été faite ou l'entreprise créée, selon le cas, par une corporation dont

(i) les personnes ayant un intérêt à titre de bénéficiaires dans la fiducie, et

(ii) les fiduciaires de la fiducie,

sont réputés être respectivement les actionnaires et les membres du conseil d'administration.

Establishment
of business in
Canada

(4) For the purposes of this Act, a business is established in Canada only if there is an establishment in Canada to which one or more employees of the person or group of persons establishing the business report for work in connection with the business, and the time at which a business is established in Canada is the

(4) Aux fins de la présente loi, une entreprise n'est créée au Canada que s'il y existe un établissement auquel un ou plusieurs employés affectés à l'entreprise de la personne ou du groupe de personnes qui créent cette entreprise se présentent au travail, et le moment auquel une entreprise est créée au Canada est celui où

Création d'une
entreprise au
Canada

time at which the first of such employees reports for work in connection with the business at such an establishment.

le premier de ces employés affectés à l'entreprise se présente au travail à cet établissement.

Presumption
with regard to
small holdings
share

* (5) With respect to any shares of a corporation of a particular class that, according to the relevant records that the corporation is required to keep under the law of the place of its incorporation, are held by individuals each of whom holds not more than 1% of the total number of issued shares of the corporation of that class, the Minister shall, in the absence of any evidence to the contrary, accept as evidence that such shares are owned by individuals who are either Canadian citizens or permanent residents within the meaning of the *Immigration Act, 1976* (other than Canadian citizens who are not ordinarily resident in Canada and who are members of a class of persons prescribed by regulation for the purposes of the definition "non-eligible person" in subsection (1) and permanent residents who have been ordinarily resident in Canada for more than one year after the time at which they first became eligible to apply for Canadian citizenship), a statement signed by the president, secretary or treasurer of the corporation, or by any other officer or person thereunto duly authorized by the board of directors or other governing body of the corporation, indicating

(a) that according to those records the individuals who hold the shares are individuals having addresses in Canada; and

(b) that the person by whom the statement is signed has no knowledge or reason to believe that the shares are not owned by individuals who are either Canadian citizens or permanent residents within the meaning of the *Immigration Act, 1976* (other than Canadian citizens who are not ordinarily resident in Canada and who are members of a class of persons prescribed by regulation for the purposes of the definition "non-eligible person" in subsection (1) and permanent residents who have been ordinarily resident in Canada for more than one year after the time at which they first became eligible to apply for Canadian citizenship).

*Note: To be proclaimed. (1976-77, c. 52, s. 129)

Présomption
touchant les
petits
actionnaires

* (5) En ce qui concerne les actions d'une corporation appartenant à une catégorie particulière qui, selon les dossiers correspondants que la corporation est requise de tenir en vertu de la loi du lieu où elle a été constituée, sont en la possession de particuliers ne détenant pas chacun plus de 1% du nombre total des actions en circulation de la corporation appartenant à cette catégorie, le Ministre doit, à défaut de preuve contraire, accepter comme preuve du fait que ces actions appartiennent à des particuliers qui sont soit des citoyens canadiens ou des résidents permanentes au sens de la *Loi sur l'immigration de 1976* (autres que des citoyens canadiens qui ne résident pas habituellement au Canada et qui font partie d'une catégorie de personnes prescrite par règlement aux fins de la définition de «personne non admissible» au paragraphe (1) et autres que des résidents permanentes qui ont résidé habituellement au Canada pendant plus d'une année à compter de la date où ils sont devenus pour la première fois admissibles à demander la citoyenneté canadienne), une déclaration signée par le président, le secrétaire ou le trésorier de la corporation, ou par tout autre membre de la direction de la corporation ou personne dûment autorisée à ce faire par le conseil d'administration ou tout autre organisme de direction de la corporation, indiquant

a) que, selon ces dossiers, les particuliers qui détiennent les actions ont chacun une adresse au Canada; et

b) que la personne ayant signé la déclaration n'a pas connaissance et n'a aucune raison de croire que les actions n'appartiennent pas à des particuliers qui sont soit des citoyens canadiens soit des résidents permanents au sens de la *Loi sur l'immigration de 1976* (autres que des citoyens canadiens qui ne résident pas habituellement au Canada et qui font partie d'une catégorie de personnes prescrite par règlement aux fins de la définition de «personne non admissible» au paragraphe (1) et autres que des résidents permanents qui ont résidé habituellement au Canada pendant plus d'une année à compter de la date où ils sont devenus pour la première fois

*Nota: Proclamation à venir. (1976-77, c. 52, art. 129)

Other rules
applicable for
purposes of Act

(6) For the purposes of this Act,

(a) the shares of a corporation are publicly traded only if shares of the corporation, to which are attached voting rights ordinarily exercisable at meetings of shareholders of the corporation, are publicly traded in the open market in the manner in which shares would normally be traded by any member of the public in the open market;

(b) where two or more persons are in a position to control a corporation, they shall, unless it is established that in their dealings in relation to the corporation they deal with one another at arm's length, be deemed to control the corporation whether or not they are part of a larger group by which the corporation is in fact controlled;

(b.1) notwithstanding any other provision of this Act, where a corporation is controlled by a group of persons (in this paragraph referred to as "the group") and shares of the corporation to which are attached more than 50% of the voting rights ordinarily exercisable at meetings of shareholders of the corporation are held by members of the group who are not non-eligible persons, in the absence of any evidence that the group includes one or more non-eligible persons who

(i) constitute more than 20% of the total number of members of the group, or

(ii) hold shares to which are attached more than 20% of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation,

the corporation shall be deemed to be controlled by a group of persons consisting of those members of the group who are not non-eligible persons and not by any other group of persons;

(c) a person who has a right under a contract, whether written or oral and whether express or implied, in equity or otherwise, either immediately or in the future and either absolutely or contingently,

(i) to, or to acquire or dispose of, shares of a corporation, or to control the voting rights attaching to shares of a corporation, or

(ii) to, or to acquire or dispose of, any property used in carrying on a business,

admissibles à demander la citoyenneté canadienne).

(6) Aux fins de la présente loi,

a) les actions d'une corporation ne sont librement négociables que si les actions de la corporation assorties du droit de vote qui peut être ordinairement exercé aux assemblées des actionnaires de la corporation sont négociables sur le marché libre de la manière dont des actions seraient normalement négociées par n'importe quel particulier sur le marché libre;

b) lorsque deux ou plusieurs personnes sont en mesure de contrôler une corporation, elles sont, sauf s'il est établi que lorsqu'elles traitent des affaires concernant la corporation il n'y a pas entre elles de lien de dépendance, censées la contrôler, qu'elles appartiennent ou non à un groupe plus important qui la contrôle en fait;

b.1) nonobstant toute autre disposition de la présente loi, lorsqu'un groupe de personnes (appelé au présent alinéa «le groupe») contrôle une corporation et que des membres du groupe qui ne sont pas des personnes non admissibles détiennent plus de 50% des actions de la corporation assorties du droit de vote qui peut être ordinairement exercé aux assemblées des actionnaires de la corporation, à défaut de preuve que le groupe comprend une ou plusieurs personnes non admissibles qui

(i) constituent plus de 20% du nombre total des membres du groupe, ou

(ii) détiennent plus de 20% des actions assorties du droit de vote qui peut être ordinairement exercé aux assemblées des actionnaires de la corporation,

la corporation est censée être contrôlée par un groupe de personnes composé des membres du groupe qui ne sont pas des personnes non admissibles et par nul autre groupe de personnes;

c) une personne qui, en vertu d'un contrat écrit ou verbal, exprès ou tacite, en *equity* ou autrement, immédiatement ou à terme et absolument ou conditionnellement,

(i) a un droit sur les actions d'une corporation, le droit d'en acquérir ou d'en disposer ou celui de contrôler le droit de vote attaché à des actions de la corporation, ou

Autres règles
applicables aux
fins de la loi

(except any such right arising under a contract that is entered into after the coming into force of this Act and that provides that the right is not exercisable until the death of an individual designated therein or any such right that is contingent upon the Governor in Council allowing the investment that is the subject of the right), shall be deemed, in any case described in subparagraph (i), to have the same position in relation to the control of the corporation as if he owned the shares, and, in any case described in subparagraph (ii), to have the same position in relation to the control of the business as if he owned the property;

(d) the acquisition of any right described in paragraph (c) shall be deemed to constitute the acquisition of the shares or property to which the right relates except where it is established that the right was acquired for the purpose of safeguarding the interests of the person by whom it was acquired in respect of a loan made by him, or in respect of an amount paid or payable by him as consideration for the sale or assignment to him of any right or rights in respect of a loan made by another person, and not for any purpose related to the provisions of this Act;

(d.1) the exercise of a right described in paragraph (c) shall be deemed not to constitute the acquisition, by the person who had the right, of the shares or property to which the right related, whether or not the acquisition of the right was deemed by paragraph (d) to constitute the acquisition of the shares or property;

(d.2) where a non-eligible person has a right described in paragraph (c) in relation to the shares of a corporation or in relation to all or substantially all of the property used in carrying on a business of a corporation, the corporation is not a non-eligible person by reason only of the fact that the person having the right is deemed by paragraph (c) to have the same position in relation to the control of the corporation or the business as if he owned the shares or the property, as the case may be;

(e) the acquisition of a leasehold interest in any property used in carrying on a business shall be deemed to constitute the acquisition of that property;

(f) a Canadian business shall be deemed to be carried on in Canada notwithstanding

(ii) a un droit sur tout bien utilisé pour l'exploitation d'une entreprise ou le droit de l'acquérir ou d'en disposer,

doit être, (sauf lorsqu'un droit quelconque de cette nature résulte d'un contrat, conclu après l'entrée en vigueur de la présente loi, qui stipule que le droit en question ne peut être exercé qu'au décès d'un particulier qui y est désigné ou lorsqu'un droit quelconque de cette nature est conditionnel à l'autorisation de l'investissement, objet du droit, par le gouverneur en conseil), réputée dans tous les cas visés au sous-alinéa (i), être dans la même situation relativement au contrôle de la corporation que si les actions qui lui appartaient et, dans tous les cas visés au sous-alinéa (ii), être dans la même situation relativement au contrôle de l'entreprise que si le bien lui appartenait;

d) l'acquisition de tout droit visé à l'alinéa c) doit être réputée constituer l'acquisition des actions ou des biens auxquels se rattache ce droit, sauf s'il est établi que la personne qui a acquis celui-ci l'a fait dans le but de sauvegarder ses intérêts à propos d'un prêt qu'elle a consenti, ou à propos d'une somme qu'elle a payée ou doit payer en contrepartie de la vente ou de l'attribution qui lui a été faite d'un ou de plusieurs droits relatifs à un prêt qu'a consenti une autre personne, et non dans un but se rattachant aux dispositions de la présente loi;

d.1) l'exercice d'un droit visé à l'alinéa c) ne doit pas être réputé constituer l'acquisition, par la personne qui détenait le droit, des actions ou des biens auxquels se rattachait ce droit, que l'acquisition du droit fut réputée ou non constituer, en vertu de l'alinéa d), l'acquisition des actions ou des biens;

d.2) lorsqu'une personne non admissible détient un droit visé à l'alinéa c) relativement aux actions d'une corporation ou à tous les biens, ou presque, utilisés pour exploiter une entreprise d'une corporation, cette corporation ne constitue pas une personne non admissible du seul fait que la personne disposant du droit est réputée, en vertu de l'alinéa c), avoir, relativement au contrôle de la corporation ou de l'entreprise, la position qu'elle aurait si elle possédait les actions ou les biens, selon le cas;

e) l'acquisition d'un droit locatif sur tout bien utilisé pour l'exploitation d'une entre-

that it is carried on partly in Canada and partly in some other place;

(g) a part of a business that is capable of being carried on as a separate business is a Canadian business enterprise if the business of which it is a part is a Canadian business enterprise; and

(h) a business carried on by a corporation that is controlled in any manner that results in control in fact, whether directly through the ownership of shares or indirectly through a trust, a contract, the ownership of shares of any other corporation or otherwise, by another corporation shall be deemed to be carried on by the controlling corporation as well as by the corporation by which the business is in fact carried on.

prise est censée constituer l'acquisition de ce bien;

f) une entreprise canadienne est censée être exploitée au Canada même si elle n'est exploitée au Canada qu'en partie;

g) une partie d'une entreprise qu'il est possible d'exploiter en tant qu'entreprise distincte est une entreprise commerciale canadienne si l'entreprise dont elle fait partie est une entreprise commerciale canadienne; et

h) une entreprise exploitée par une corporation qui est, d'une manière qui aboutit à un contrôle de fait, que ce soit directement par l'intermédiaire de la propriété de ses actions ou indirectement par l'intermédiaire d'une fiducie, d'un contrat, de la propriété des actions de quelque autre corporation ou autrement, sous le contrôle d'une autre corporation, est censée être exploitée par la corporation qui a le contrôle ainsi que par la corporation qui l'exploite en fait.

Control of
corporation by
group of
persons

(7) For greater certainty,

(a) the reference in paragraph (c) of the definition "non-eligible person" in subsection (1) to a "group of persons" does not include the aggregation of persons who together own all of the shares of, or all of the shares of a particular class of, any corporation in relation to which the reference is relevant or who together constitute all of the members of any such corporation that is a corporation without share capital, except where those persons act in concert with one another in any matter or transaction affecting the corporation or its management, ownership or financial affairs;

(b) where no one person or group of persons controls a corporation through the ownership of shares of the corporation or any other corporation, or where a corporation is a corporation without share capital, the corporation shall be presumed to be controlled by the group of persons comprising the board of directors or other governing body of the corporation, in the absence of any evidence that the corporation is in fact controlled by some other person or group of persons; and

(c) where a corporation is controlled by the board of directors or other governing body of the corporation the members of which body include one or more persons described in paragraph (a) or (b) of the definition "non-eligible person" in subsection (1),

(7) Pour plus de certitude,

a) la mention, à l'alinéa c) de la définition de l'expression «personne non admissible» du paragraphe (1), d'un «groupe de personnes», ne comprend pas un ensemble de personnes qui sont ensemble propriétaires de toutes les actions ou de toutes les actions d'une catégorie particulière d'une corporation à laquelle se rapporte cette mention, ni un ensemble de personnes qui représentent à elles seules la totalité des membres d'une telle corporation sans capital actions sauf si ces personnes agissent de concert les unes avec les autres dans toute affaire ou transaction touchant la corporation, sa gestion, sa propriété ou ses opérations financières;

b) lorsque aucune personne ou groupe de personnes ne contrôle une corporation grâce à la propriété d'actions de cette corporation ou de toute autre, ou lorsqu'une corporation est une corporation sans capital-actions, le groupe de personnes composant le conseil d'administration de cette corporation ou tout autre organisme qui la dirige doit être présumé en détenir le contrôle en l'absence d'une preuve quelconque qu'une autre personne ou qu'un autre groupe de personnes en détient, en fait, le contrôle; et

c) lorsque le conseil d'administration de la corporation ou un autre organisme qui la dirige, parmi les membres desquels se trou-

Contrôle de
corporation par
un groupe de
personnes

(i) if the number of members of that body who are persons so described does not exceed 20% of the total number of members of that body, the corporation shall be deemed not to be a corporation described in paragraph (c) of that definition,

(ii) if the number of members of that body who are persons so described exceeds 20% of the total number of members of that body but is less than 50% of that number, the corporation shall, if it is established that no members of that body who are persons so described and who exceed 20% of the total number of members of that body act in concert with one another in matters affecting the management of the corporation, be deemed not to be a corporation described in paragraph (c) of that definition, and

(iii) if the number of members of that body who are persons so described is 50% or more of the total number of members of that body, the corporation shall be deemed to be a corporation described in paragraph (c) of that definition.

vent une ou plusieurs personnes visées aux alinéas a) ou b) de la définition de l'expression «personne non admissible» du paragraphe (1), détiennent le contrôle de cette corporation,

(i) si le nombre des membres de cet organisme qui sont des personnes ainsi visées n'excède pas 20% du nombre total de ses membres, la corporation doit être réputée ne pas être une corporation visée à l'alinéa c) de ladite définition,

(ii) si le nombre des membres de cet organisme qui sont des personnes ainsi visées excède 20% mais est inférieur à 50% du nombre total de ses membres, la corporation doit, s'il est prouvé qu'il n'y a pas de membres de cet organisme, qui sont des personnes ainsi visées et dont le nombre excède 20% du nombre total de ses membres, qui agissent de concert les uns avec les autres dans des domaines touchant à la gestion de la corporation, être réputée ne pas être une corporation visée à l'alinéa c) de ladite définition, et

(iii) si le nombre des membres de cet organisme qui sont des personnes ainsi visées est égal ou supérieur à 50% du nombre total de ses membres, la corporation doit être réputée être une corporation visée à l'alinéa c) de ladite définition.

Acquisition by more than one transaction or event

(8) For greater certainty, a reference in this Act to the acquisition of any thing includes any acquisition thereof that occurs as a result of more than one transaction or event, whether or not those transactions or events occur or have occurred as or as part of a series of related transactions or events and, subject to any other provision of this Act, whether or not one or more of those transactions or events occurred before the coming into force of this Act.

(8) Pour plus de certitude, une mention dans la présente loi de l'acquisition d'une chose quelconque comprend toute acquisition de celle-ci qui intervient à la suite de plus d'une transaction ou d'un événement, que ces transactions ou événements interviennent ou non, ou soient intervenus ou non, en tant que tout ou partie d'une série de transactions ou événements reliés les uns aux autres, et sous réserve de toute autre disposition de la présente loi, qu'une ou plusieurs de ces transactions ou événements soient intervenus avant l'entrée en vigueur de la présente loi.

Acquisition par plus d'une transaction ou événement

Where business not carried on

(9) For greater certainty, a person, group of persons or corporation that acquires and holds land, whether with the intention of disposing thereof within a fixed or determinable period of time or otherwise, does not, by reason only of the holding of the land and the expenditure of funds to maintain the land in the condition in which it was acquired or to improve the land for the personal use and enjoyment of the person or persons holding it or of the sharehold-

(9) Pour plus de certitude, une personne, un groupe de personnes ou une corporation qui acquièrent et détiennent des fonds de terre, que ce soit avec l'intention d'en disposer dans un délai fixé ou déterminable ou autrement, n'exploitent pas une entreprise du seul fait qu'ils détiennent ces fonds de terre et qu'ils dépensent des fonds pour les entretenir dans l'état où ils se trouvaient lors de leur acquisition ou pour les améliorer pour l'usage personnel et la jouis-

Cas où il n'y a pas exploitation d'une entreprise

ers of the corporation holding it, carry on a business. 1973-74, c. 46, s. 3; 1976-77, c. 52, s. 128.

Application for opinion on question whether person a non-eligible person or business an unrelated business

4. (1) Where any question arises under this Act as to whether a person is, or is not, a non-eligible person or as to whether a particular business would or would not be, if it were established, or is or is not a business unrelated to any other business carried on by a person or group of persons, the Minister shall, upon application by or on behalf of

- (a) the person who may be a non-eligible person,
- (b) any group of persons of which the person referred to in paragraph (a) is a member, or
- (c) the person or group of persons carrying on that other business,

forthwith consider the application and any information and evidence submitted therewith and, unless he concludes that the information and evidence submitted therewith is not sufficient to enable him to reach an opinion on the question, shall thereupon furnish to the applicant for his guidance a statement in writing of the opinion reached by the Minister thereon based on such information and evidence and such statement is, if all material facts have been disclosed to the Minister in the information and evidence submitted to him, binding on the Minister for so long as the material facts so disclosed remain substantially unchanged or for two years from the time when the statement was so submitted if, throughout that period, the material facts so disclosed remain substantially unchanged.

Guidelines

(2) The Minister may issue and publish, in such manner as he deems appropriate, guidelines with respect to the application and administration of any provision of this Act or any regulation made pursuant to this Act. 1973-74, c. 46, s. 4.

APPLICATION

Application of Act in respect of takeovers

5. (1) This Act applies in respect of any acquisition of control of a Canadian business enterprise after the coming into force of this Act, except

- (a) a business enterprise carried on by a corporation that is an agent of Her Majesty in right of Canada or a province or that is

sance de la ou des personnes ou des actionnaires de la corporation les détenant. 1973-74, c. 46, art. 3; 1976-77, c. 52, art. 128.

4. (1) Lorsque, en vertu de la présente loi, la question est soulevée de savoir si une personne est ou non une personne non admissible, ou si une entreprise nouvelle déterminée serait ou ne serait pas, si elle était créée, ou n'est ou n'est pas, liée à quelque autre entreprise qu'exploite une personne ou un groupe de personnes, le Ministre doit, sur demande que lui présente

- a) la personne qui peut être une personne non admissible,
- b) tout groupe de personnes dont la personne que vise l'alinéa a) est membre, ou
- c) la personne ou le groupe de personnes qui exploite l'entreprise,

ou qui lui est présentée pour le compte de l'un d'entre eux, étudier immédiatement la demande ainsi que tous renseignements et toute preuve présentés à l'appui de la demande et, sauf s'il conclut que ces renseignements et cette preuve ne sont pas suffisants pour lui permettre de se faire une opinion sur la question, il doit sans retard fournir au requérant, pour le guider, un exposé écrit de l'opinion qu'il s'est faite sur la question en se fondant sur ces renseignements et cette preuve et, si tous les faits essentiels lui ont été divulgués dans les renseignements et la preuve qui lui ont été présentés, cet exposé l'engage aussi longtemps que les faits essentiels ainsi divulgués demeurent sensiblement les mêmes ou pendant deux ans à compter de la date où l'exposé a été ainsi présenté si, durant cette période, les faits essentiels ainsi divulgués demeurent sensiblement les mêmes.

(2) Le Ministre peut émettre et publier, de la façon qu'il estime appropriée, des principes directeurs relatifs à l'application et à l'administration de toute disposition de la présente loi ou de tout règlement établi en application de la présente loi. 1973-74, c. 46, art. 4.

CHAMP D'APPLICATION

5. (1) La présente loi s'applique en ce qui concerne toute forme d'acquisition du contrôle d'une entreprise commerciale canadienne après l'entrée en vigueur de la présente loi, sauf s'il s'agit

- a) d'une entreprise commerciale exploitée par une corporation qui est mandataire de Sa

Demande d'opinion sur le point de savoir si une personne est une personne non admissible ou une entreprise non liée

Principes directeurs

Champ d'application la loi à l'égard des prises de contrôle

named in Schedule D to the *Financial Administration Act*;

(b) a business enterprise carried on by a corporation the taxable income of which is exempt from tax under Part I of the *Income Tax Act* by paragraph 149(1)(d) of that Act; and

(c) subject to subsection 31(3), a business enterprise

(i) the gross assets of which, determined as of the end of the latest completed fiscal period thereof in a manner prescribed by the regulations, do not exceed \$250,000, and

(ii) the gross revenue of which, determined for the latest completed fiscal period thereof that is of not less than fifty-two weeks duration in a manner prescribed by the regulations, does not exceed \$3,000,000.

Majesté du chef du Canada ou d'une province, ou dont le nom figure à l'annexe D de la *Loi sur l'administration financière*;

b) d'une entreprise commerciale exploitée par une corporation dont le revenu imposable est exonéré du paiement de l'impôt prévu à la Partie I de la *Loi de l'impôt sur le revenu*, par l'alinéa 149(1)d) de cette loi; et

c) sous réserve du paragraphe 31(3), d'une entreprise commerciale

(i) dont l'actif brut, calculé de la manière prescrite par les règlements, à la fin de son dernier exercice financier terminé, ne dépasse pas \$250,000, et

(ii) dont les recettes brutes, calculées de la manière prescrite par les règlements, pour son dernier exercice financier terminé dont la durée n'est pas inférieure à cinquante-deux semaines, ne dépassent pas \$3,000,000.

Associated
business
enterprises

(2) In determining the gross assets and the gross revenue, respectively, of a Canadian business enterprise for the purposes of subsection (1), the gross assets and the gross revenue, respectively, of each Canadian business enterprise that is, by reason of interrelationship of management, ownership or financial affairs, associated with that enterprise shall be included unless, in any such case, the Minister is satisfied that the separate existence of the associated enterprises or the fact that they are carried on by separate persons is for the purpose of carrying on those enterprises in the most effective manner and is not for any purpose related to the provisions of this Act.

Entreprises
commerciales
associées

(2) Pour calculer l'actif brut, d'une part, et les recettes brutes, d'autre part, d'une entreprise commerciale canadienne aux fins du paragraphe (1), l'actif brut, d'une part, et les recettes brutes, d'autre part, de chaque entreprise commerciale canadienne qui, du fait de liens mutuels au niveau de la gestion, de la propriété ou des affaires financières, est associée avec cette entreprise, doivent être pris en compte sauf si, dans un tel cas, le Ministre est convaincu que l'existence distincte des entreprises associées ou le fait qu'elles sont exploitées par des personnes distinctes vise à en assurer l'exploitation de la manière la plus efficace et ne vise aucun dessein se rattachant aux dispositions de la présente loi.

Effect on
operation of
other Acts

(3) Nothing in, or done under the authority of, this Act affects the operation of any other Act of Parliament that applies to or in respect of any particular Canadian business enterprise or class of Canadian business enterprises, except as expressly provided in this Act. 1973-74, c. 46, s. 5.

Effet sur
l'application
d'autres lois

(3) Rien dans la présente loi et rien de ce qui se fait sous son régime ne modifie l'application de toute autre loi du Parlement qui s'applique à une entreprise commerciale canadienne déterminée ou à une catégorie déterminée d'entreprises commerciales canadiennes ou au cas d'une telle entreprise ou catégorie d'entreprises, sauf les exceptions expressément prévues dans la présente loi. 1973-74, c. 46, art. 5.

Application of
Act in respect
of new
businesses

6. This Act applies in respect of any establishment of a new business in Canada on or after the day fixed by any proclamation issued under subsection 31(2). 1973-74, c. 46, s. 6.

Champ
d'application de
la loi à l'égard
d'une entreprise
nouvelle

6. La présente loi s'applique à l'égard de la création au Canada de toute entreprise nouvelle, qui intervient à compter du jour que fixe une proclamation faite en application du paragraphe 31(2). 1973-74, c. 46, art. 6.

ESTABLISHMENT OF AGENCY

CRÉATION DE L'AGENCE

Agency
established

7. (1) There is hereby established an agency, to be known as the Foreign Investment Review Agency, to advise and assist the Minister in connection with the administration of this Act.

7. (1) Il est par la présente loi créé une agence, appelée l'Agence d'examen de l'investissement étranger, qui est destinée à conseiller et à assister le Ministre dans l'administration de la présente loi.

Création de
l'AgenceAppointment of
Commissioner

(2) The Governor in Council shall appoint a person to be the Commissioner of the Agency who shall be the chief executive officer of the Agency and shall be responsible to the Minister for the work of the Agency.

(2) Le gouverneur en conseil doit nommer comme commissaire de l'Agence une personne qui en est l'agent administratif en chef et doit être responsable envers le Ministre des travaux de celle-ci.

Nomination
d'un commis-
saireOfficers and
employees

(3) The Minister may make available to the Agency the services of such officers and employees from within the department of the Government of Canada over which he presides as are necessary for the proper conduct of the work of the Agency. 1973-74, c. 46, s. 7.

(3) Le Ministre peut mettre à la disposition de l'Agence les services des agents et employés, pris dans le ministère du gouvernement du Canada qu'il dirige, nécessaires à une conduite convenable des travaux de l'Agence. 1973-74, c. 46, art. 7.

Agents et
employésPROCEDURE IN RELATION TO PROPOSED
INVESTMENTS AND ACTUAL INVESTMENTSPROCÉDURE À SUIVRE EN MATIÈRE
D'INVESTISSEMENTS PROPOSÉS ET
D'INVESTISSEMENTS EFFECTIFSNotice of
proposed
acquisition of
control

8. (1) Every non-eligible person, and every group of persons any member of which is a non-eligible person, that proposes to acquire control of a Canadian business enterprise shall give notice in writing to the Agency of such proposal in such form and manner and containing such information as is prescribed by the regulations.

8. (1) Toute personne non admissible, et tout groupe de personnes dont un membre est une personne non admissible, qui propose d'acquies le contrôle d'une entreprise commerciale canadienne, doit en donner avis à l'Agence par écrit, cet avis devant être donné en telle forme et de telle manière, et contenir tels renseignements, que prescrivent les règlements.

Avis de la
proposition
d'un commis-
sionnaireNotice of
proposed
establishment
of new business

(2) Every non-eligible person, and every group of persons any member of which is a non-eligible person, that proposes to establish a new business in Canada shall,

(2) Toute personne non admissible, et tout groupe de personnes dont un membre est une personne non admissible, qui propose de créer une entreprise nouvelle au Canada doit

Avis de la
proposition de
création d'une
entreprise
nouvelle

(a) if immediately before the time when the new business is proposed to be established no other business is carried on in Canada by that person or group of persons, or

a) si cette personne ou ce groupe de personnes n'exploite, immédiatement avant le moment où il propose de créer une entreprise nouvelle, aucune autre entreprise au Canada, ou

(b) if each other business carried on in Canada by that person or group of persons immediately before the time referred to in paragraph (a) is a business to which the new business would, if it were established, be unrelated,

b) si chacune des autres entreprises que cette personne ou ce groupe de personnes exploite au Canada, immédiatement avant le moment que vise l'alinéa a) est une entreprise nouvelle, si elle était créée, ne serait pas liée,

give notice in writing to the Agency of such proposal in such form and manner and containing such information as is prescribed by the regulations.

en donner avis à l'Agence par écrit, cet avis devant être donné en telle forme et de telle manière, et contenir tels renseignements, que prescrivent les règlements.

Demand for
notice

(3) Where the Minister has reasonable and probable grounds to believe that a person or group of persons described in subsection (1) or (2)

(3) Lorsque le Ministre a des motifs sérieux et plausibles de croire qu'une personne ou un groupe de personnes visés aux paragraphes (1) ou (2)

Avis requis par
mise en
demeure

- (a) proposes to
- (i) acquire control of a Canadian business enterprise, or
 - (ii) establish a new business in Canada in circumstances in which paragraph (2)(a) or (b) is applicable,

(which proposed acquisition or establishment is hereafter in this Act called a "proposed" investment), or

- (b) has actually
- (i) acquired control of a Canadian business enterprise, or
 - (ii) established a new business in Canada in circumstances in which paragraph (2)(a) or (b) was applicable immediately before the time when the new business was established,

(which actual acquisition or establishment is hereafter in this Act called an "actual" investment),

and either no notice of the proposed investment has been given to the Agency under whichever of subsections (1) and (2) is applicable, or no notice of a proposal to make the actual investment was given to the Agency under that subsection before the time when the investment is believed to have been made, as the case may be, the Minister may, by a demand served personally or by registered mail, require that person or any member or members of that group, within such reasonable time as is stipulated therein, to give notice in writing to the Agency of the proposed or actual investment in such form and manner and containing such information as is prescribed by the regulations.

- a) propose

- (i) d'acquérir le contrôle d'une entreprise commerciale canadienne, ou
- (ii) de créer au Canada une entreprise nouvelle, dans des conditions où les alinéas (2)a) ou b) s'appliquent,

(acquisition ou création qui, lorsqu'elles sont ainsi proposées, sont appelées ci-après dans la présente loi un investissement «proposé»), ou

- b) a effectivement
- (i) acquis le contrôle d'une entreprise commerciale canadienne, ou
 - (ii) créé au Canada une entreprise nouvelle, dans des conditions où, immédiatement avant le moment de sa création, les alinéas (2)a) ou b) s'appliquaient,

(acquisition ou création effectives qui sont ci-après appelées dans la présente loi un investissement «effectif»),

et qu'avis de cet investissement proposé n'a pas été donné à l'Agence, comme l'exige celui des paragraphes (1) ou (2) qui s'applique en l'espèce, ou qu'avis n'a pas été donné à l'Agence de la proposition de réaliser cet investissement effectif, comme l'exige ce même paragraphe, avant le moment où l'on pense que cet investissement est intervenu, selon le cas, le Ministre peut, par mise en demeure signifiée à personne ou expédiée par courrier recommandé, sommer cette personne ou l'un ou plusieurs membres de ce groupe de donner avis à l'Agence, par écrit, dans un délai raisonnable que fixe la mise en demeure, de cet investissement proposé ou effectif, l'avis devant être donné en telle forme et de telle manière, et contenir tels renseignements, que prescrivent les règlements.

(3.1) A demand served by the Minister under subsection (3) shall indicate the nature of the proceedings that may be taken under this Act in circumstances where a person on whom such a demand is served fails to comply therewith.

(3.1) Une mise en demeure signifiée par le Ministre en vertu du paragraphe (3) doit indiquer la nature des procédures qui peuvent être intentées en vertu de la présente loi dans les cas où une personne à laquelle cette mise en demeure est signifiée ne s'y conformerait pas.

(4) Forthwith on receipt of a notice under subsection (1), (2) or (3), the Agency shall send by registered mail to the person or persons who gave the notice a certificate, signed by the Commissioner, as to the date of receipt of the notice by the Agency. 1973-74, c. 46, s. 8.

(4) Dès réception de l'avis prévu aux paragraphes (1), (2) ou (3), l'Agence doit expédier à toute personne qui l'a donné, par courrier recommandé, un certificat signé du commissaire, attestant la date de réception de l'avis. 1973-74, c. 46, art. 8.

9. Following receipt by the Agency of a notice under subsection 8(1), (2) or (3), the

9. Lorsque l'Agence a reçu un avis prévu aux paragraphes 8(1), (2) ou (3), elle doit le

Contenu de la mise en demeure

Certificat de réception de l'avis

Examen et appréciation par le Ministre

notice shall be referred by the Agency to the Minister who shall thereupon review

- (a) the information contained in the notice,
- (b) any other information submitted to him by any party to the proposed or actual investment to which the notice relates,
- (c) any written undertakings to Her Majesty in right of Canada relating to the proposed or actual investment given by any party thereto conditional upon the allowance of the investment in accordance with this Act, and
- (d) any representations submitted to him by a province that is likely to be significantly affected by the proposed or actual investment to which the notice relates,

for the purpose of assessing whether or not, in his opinion, having regard to the factors enumerated in subsection 2(2), the investment is or is likely to be of significant benefit to Canada. 1973-74, c. 46, s. 9.

Recommendation by Minister to Governor in Council

10. Where the Minister, on completion of the assessment referred to in section 9, is of the opinion that the investment to which the assessment relates is or is likely to be of significant benefit to Canada and less than sixty days have elapsed since the date of receipt by the Agency of the notice under subsection 8(1), (2) or (3) relating thereto, the Minister shall

- (a) recommend to the Governor in Council that the investment be allowed; and
- (b) submit to the Governor in Council in support of such recommendation a summary of the information and written undertakings to Her Majesty in right of Canada, if any, on the basis of which the recommendation is made. 1973-74, c. 46, s. 10.

Notice of right to make representations

11. (1) Where, at any time before the completion of the assessment referred to in section 9, the Minister is of the opinion that, on the basis of the information contained in the notice under subsection 8(1), (2) or (3) relating to the proposed or actual investment to which the assessment relates, any other information submitted by any party to the proposed or actual investment and any written undertakings to Her Majesty in right of Canada relating thereto given by any such party conditional upon the allowance of the investment in accordance with this Act, he is unable to complete the assessment or to make any recommendation to the

renvoyer au Ministre, qui doit dès lors examiner

- a) les renseignements contenus dans l'avis,
- b) tous autres renseignements qui lui ont été fournis par toute partie à l'investissement proposé ou effectif auquel se rapporte l'avis,
- c) tout engagement écrit envers Sa Majesté du chef du Canada se rattachant à l'investissement proposé ou effectif, remis par une partie à celui-ci sous réserve d'autorisation de l'investissement, conformément à la présente loi, et
- d) toutes observations qui lui ont été présentées par une province pour laquelle l'investissement proposé ou effectif auquel se rapporte l'avis aura vraisemblablement des répercussions appréciables,

afin d'apprécier si, à son avis, compte tenu des facteurs énumérés au paragraphe 2(2), l'investissement apporte ou est susceptible d'apporter des avantages appréciables au Canada. 1973-74, c. 46, art. 9.

10. Lorsque, après avoir terminé l'appréciation mentionnée à l'article 9, le Ministre est d'avis que l'investissement qu'elle concerne apporte ou est susceptible d'apporter des avantages appréciables au Canada et que moins de soixante jours se sont écoulés depuis la date de la réception, par l'Agence, de l'avis y relatif prévu aux paragraphes 8(1), (2) ou (3), il doit

- a) recommander au gouverneur en conseil d'autoriser l'investissement; et
- b) présenter au gouverneur en conseil, à l'appui de cette recommandation, un résumé des renseignements et, le cas échéant, des engagements écrits envers Sa Majesté du chef du Canada, sur lesquels se fonde la recommandation. 1973-74, c. 46, art. 10.

Recommandation du Ministre au gouverneur en conseil

11. (1) Lorsque le Ministre est d'avis, avant d'avoir terminé l'appréciation mentionnée à l'article 9, que, selon les renseignements contenus dans l'avis donné en vertu des paragraphes 8(1), (2) ou (3) au sujet de l'investissement proposé ou effectif sur lequel porte l'appréciation, tous autres renseignements fournis par quelque partie à l'investissement proposé ou effectif et tous engagements écrits envers Sa Majesté du chef du Canada qui s'y rattachent, remis par une telle partie sous réserve d'autorisation de l'investissement conformément à la présente loi, ne lui permettent pas de terminer l'appréciation ou de faire à cet égard une

Notification du droit de présenter des observations

Governor in Council in connection therewith, or where in any other case, on completion of the assessment referred to in section 9, the Minister is of the opinion that he is unable under section 10 to recommend to the Governor in Council that the investment be allowed, the Minister shall so notify the Agency which shall, if less than sixty days have elapsed since the date of receipt by it of the notice under subsection 8(1), (2) or (3) relating thereto, forthwith send by registered mail to the person or persons who gave the notice, a notice of the Minister's opinion, advising that person or those persons of his or their right to make such representations or further representations in connection with the matter as he or they see fit.

recommandation au gouverneur en conseil, ou que, dans tout autre cas, il est d'avis, après avoir terminé l'appréciation mentionnée à l'article 9, qu'il n'est pas en mesure, aux termes de l'article 10, de recommander au gouverneur en conseil d'autoriser l'investissement, il doit le notifier à l'Agence; celle-ci doit immédiatement, si moins de soixante jours se sont écoulés depuis la date à laquelle elle a reçu l'avis y relatif prévu par les paragraphes 8(1), (2) ou (3), notifier l'avis du Ministre par courrier recommandé à toute personne qui a donné l'avis prévu aux paragraphes 8(1), (2) ou (3), et l'informer de son droit de présenter, au sujet de cette affaire, les observations ou observations supplémentaires qu'elle estime à propos.

Where matter to be submitted to Governor in Council

(2) Where notice of the Minister's opinion in respect of a proposed or actual investment is sent by the Agency under subsection (1) and no reply thereto is received by the Agency within thirty days after the day such notice was sent, or within such longer period as is specified in the notice or as is agreed to in writing by the Minister and each person to whom the notice was sent, wherein any party to the proposed or actual investment advises the Agency that he wishes to avail himself of his right to make representations in connection with the matter, the Minister shall submit the matter to the Governor in Council together with a summary of the information contained in the notice under subsection 8(1), (2) or (3) relating thereto, any other information submitted by any party to the proposed or actual investment, any written undertakings to Her Majesty in right of Canada relating thereto given by any such party conditional upon the allowance of the investment in accordance with this Act and any representations submitted by a province that is likely to be significantly affected by the proposed or actual investment to which the notice relates.

(2) Lorsque l'Agence expédie en vertu du paragraphe (1) une notification de l'avis du Ministre concernant un investissement proposé ou effectif et qu'elle ne reçoit pas, soit dans un délai de trente jours suivant la date à laquelle cette notification a été expédiée, soit dans tout délai plus long que précise la notification ou dont conviennent par écrit le Ministre et chaque personne à laquelle elle a été expédiée, de réponse y relative dans laquelle une partie à l'investissement proposé ou effectif l'informe qu'elle veut se prévaloir de son droit de présenter des observations sur l'affaire, le Ministre doit présenter l'affaire au gouverneur en conseil et lui fournir un résumé des renseignements contenus dans l'avis y relatif donné en vertu des paragraphes 8(1), (2) ou (3), de tous autres renseignements fournis par quelque partie à l'investissement proposé ou effectif, de tous engagements écrits envers Sa Majesté du chef du Canada qui s'y rattachent, remis par une telle partie sous réserve d'autorisation de l'investissement, conformément à la présente loi, et de toutes observations présentées par une province pour laquelle l'investissement proposé ou effectif auquel se rapporte l'avis aura vraisemblablement des répercussions appréciables.

Cas où l'affaire doit être présentée au gouverneur en conseil

Representations and consultations

(3) Where one or more parties to a proposed or actual investment advise the Agency in reply to a notice sent by it under subsection (1), within the time provided in subsection (2), that they wish to avail themselves of their right to make representations in connection with the matter, the Agency shall so notify the Minister, and thereupon the Minister

(3) Lorsqu'une ou plusieurs parties à un investissement proposé ou effectif informent l'Agence, en réponse à une notification qu'elle a expédiée en vertu du paragraphe (1), dans le délai prévu au paragraphe (2), qu'elles veulent se prévaloir de leur droit de présenter des observations sur l'affaire, l'Agence doit le notifier au Ministre et dès lors, celui-ci

Observations et consultations

(a) shall afford to each party who so replied to the notice a reasonable opportunity, either

a) doit fournir dans des conditions raisonnables, à chaque partie qui a répondu dans ce

in person or through counsel or an agent, to make such representations or further representations in connection with the matter, and to give such written undertakings or further written undertakings to Her Majesty in right of Canada relating to the proposed or actual investment conditional upon the allowance of the investment in accordance with this Act, as that party sees fit; and

(b) may consult with any other party to the proposed or actual investment, and, at the request in writing of any party thereto, with any person or authority named in the request.

Recommenda-
tion to
Governor in
Council after
representations
and consulta-
tions

(4) At such time as all representations and consultations, if any, contemplated by subsection (3) with respect to a proposed or actual investment have been made or concluded, as the case may be, the Minister shall, in the light of those representations and consultations, reconsider the opinion referred to in subsection (1) reached by him with respect to the proposed or actual investment and where, as a result of such reconsideration, he concludes that the investment is or is likely to be of significant benefit to Canada, he shall recommend to the Governor in Council that the investment be allowed but where he does not reach that conclusion, he shall recommend to the Governor in Council that he refuse to allow the investment.

Summary to
accompany
recommenda-
tion

(5) A recommendation to the Governor in Council by the Minister under subsection (4) shall be accompanied by a summary of the proceedings under this Act in respect of the investment to which the recommendation relates. 1973-74, c. 46, s. 11.

Order of
Governor in
Council

12. (1) On receipt by the Governor in Council of a recommendation or submission by the Minister with respect to an investment, the Governor in Council shall consider the recommendation and the summary submitted in connection therewith or the submission, as the case may be, and where, having regard to the factors enumerated in subsection 2(2), he concludes that the investment is or is likely to be of significant benefit to Canada, he shall, by order, allow the investment but where he does not reach that conclusion, he shall, by order, refuse to allow the investment.

sens à la notification, l'occasion de présenter sur l'affaire, en personne ou par un avocat ou mandataire, telles observations ou observations supplémentaires, et de remettre de la même façon, relativement à l'investissement proposé ou effectif tels engagements écrits ou engagements écrits supplémentaires envers Sa Majesté du chef du Canada, sous réserve d'autorisation de l'investissement conformément à la présente loi, que cette partie juge à propos; et

b) peut procéder à des consultations avec toute autre partie à l'investissement proposé ou effectif, et, à la requête écrite de toute partie à celui-ci, avec toute personne ou autorité nommément désignée dans la requête.

(4) Lorsque toutes les observations et les consultations qu'envisage le paragraphe (3) relativement à un investissement proposé ou effectif ont été faites ou sont terminées, le Ministre doit, à la lumière de ces observations et consultations, reconsidérer l'avis, mentionné au paragraphe (1), auquel il est arrivé relativement à l'investissement proposé ou effectif et lorsqu'il conclut, après ce nouvel examen, que l'investissement apporte ou est susceptible d'apporter des avantages appréciables au Canada, il doit recommander au gouverneur en conseil d'autoriser celui-ci; par contre, lorsqu'il n'arrive pas à cette conclusion, il doit recommander au gouverneur en conseil de refuser d'autoriser l'investissement.

(5) Il doit être joint à une recommandation que le Ministre fait au gouverneur en conseil en vertu du paragraphe (4) un résumé des formalités effectuées, en vertu de la présente loi, relativement à l'investissement auquel se rapporte la recommandation. 1973-74, c. 46, art. 11.

12. (1) A la réception d'une recommandation ou d'un exposé du Ministre au sujet d'un investissement, le gouverneur en conseil doit étudier la recommandation et le résumé soumis à l'appui de celle-ci, ou l'exposé, selon le cas, et lorsqu'il conclut, compte tenu des facteurs énumérés au paragraphe 2(2), que cet investissement apporte ou est susceptible d'apporter des avantages appréciables au Canada, il doit, par décret, l'autoriser; par contre, lorsqu'il n'arrive pas à cette conclusion, il doit, par décret, refuser d'autoriser l'investissement.

Recommenda-
tion au
gouverneur en
conseil après les
observations et
consultations

Un résumé doit
être joint à la
recommanda-
tion

Décret du
gouverneur en
conseil

Direction to
Minister

(2) Notwithstanding subsection (1), where, in the case of any investment in respect of which the Governor in Council does not reach the conclusion referred to in subsection (1), the recommendation in connection therewith was made by the Minister pursuant to section 10 and less than sixty days have elapsed since the date of receipt by the Agency of the notice under subsection 8(1), (2) or (3) to which the recommendation relates, the Governor in Council may, instead of refusing to allow the investment, by order direct the Minister forthwith to proceed under section 11 in all respects as though the Minister had been of the opinion that he was not able to make a recommendation to the Governor in Council under section 10.

Copy of order
to be sent by
Agency

(3) A copy of any order made by the Governor in Council under subsection (1) shall, forthwith after the making thereof, be sent by the Agency to the person or persons who gave notice under subsection 8(1), (2) or (3) of the proposed or actual investment to which the order relates. 1973-74, c. 46, s. 12.

Where
Governor in
Council deemed
to have allowed
investment

13. (1) In any case where

(a) sixty days have elapsed since the date of receipt by the Agency of a notice of a proposed or actual investment under subsection 8(1), (2) or (3),

(b) no order has been made by the Governor in Council under subsection 12(1) with respect to the investment to which the notice relates, and

(c) no notice has been sent by the Agency under subsection 11(1) to the person or persons who gave the notice,

the Governor in Council shall be deemed, for all purposes of this Act, to have allowed the investment to which the notice under subsection 8(1), (2) or (3) relates.

Notification to
be given by
Agency

(2) Where the Governor in Council is deemed to have allowed an investment to which a notice under subsection 8(1), (2) or (3) relates, the Agency shall so notify the person or persons who gave the notice and shall send a copy of such notification to the Clerk of the Privy Council, which copy shall, for the purposes of the *Statutory Instruments Act*, be deemed to be a statutory instrument and shall be registered as such by the Clerk of the Privy Council under that Act. 1973-74, c. 46, s. 13.

Ordre au
Ministre

(2) Nonobstant le paragraphe (1), et dans le cas de tout investissement au sujet duquel le gouverneur en conseil n'arrive pas à la conclusion mentionnée au paragraphe (1), lorsque le Ministre a fait la recommandation y relative en application de l'article 10 et que moins de soixante jours se sont écoulés depuis la date à laquelle l'Agence a reçu l'avis, donné en vertu des paragraphes 8(1), (2) ou (3), auquel se rapporte la recommandation, le gouverneur en conseil peut, au lieu de refuser d'autoriser l'investissement, ordonner immédiatement au Ministre, par décret, de procéder à tous égards conformément à l'article 11, comme si le Ministre avait été d'avis qu'il n'était pas en mesure de faire une recommandation au gouverneur en conseil en vertu de l'article 10.

L'Agence doit
expédier une
copie du décret

(3) L'Agence doit, dès qu'un décret a été pris par le gouverneur en conseil en vertu du paragraphe (1), en expédier une copie à la personne ou aux personnes qui ont donné, en vertu des paragraphes 8(1), (2) ou (3), avis de l'investissement proposé ou effectif auquel se rapporte le décret. 1973-74, c. 46, art. 12.

Cas où le
gouverneur en
conseil est
réputé avoir
autorisé
l'investissement

13. (1) Dans tous les cas où

a) soixante jours se sont écoulés depuis la date à laquelle l'Agence a reçu, en conformité des paragraphes 8(1), (2) ou (3), avis d'un investissement proposé ou effectif,

b) le gouverneur en conseil n'a pas pris, en vertu du paragraphe 12(1), de décret relativement à l'investissement auquel se rapporte l'avis, et

c) l'Agence n'a expédié, en vertu du paragraphe 11(1), aucune notification à la personne ou aux personnes qui ont donné l'avis,

le gouverneur en conseil doit être réputé, à toutes fins de la présente loi, avoir autorisé l'investissement auquel se rapporte l'avis prévu aux paragraphes 8(1), (2) ou (3).

Notification
que doit
expédier
l'Agence

(2) Lorsque le gouverneur en conseil est réputé avoir autorisé un investissement auquel se rapporte un avis donné en vertu des paragraphes 8(1), (2) ou (3), l'Agence doit le notifier à toute personne qui a donné l'avis et doit expédier une copie de cette notification au greffier du Conseil privé; cette copie est réputée, aux fins de la *Loi sur les textes réglementaires*, être un texte réglementaire et le greffier du Conseil privé doit l'enregistrer comme telle en application de cette loi. 1973-74, c. 46, art. 13.

INFORMATION

RENSEIGNEMENTS

Communication
of privileged
information

14. (1) Except as provided in this section, all information with respect to a person, business or proposed business obtained by the Minister or an officer or employee of Her Majesty in the course of the administration of this Act is privileged and no person shall knowingly, except as provided in this Act, communicate or allow to be communicated to any person not legally entitled thereto any such information or allow any person not legally entitled thereto to inspect or have access to any such information.

14. (1) Sont privilégiés, sauf disposition contraire du présent article, tous les renseignements sur une personne, une entreprise ou une entreprise proposée obtenus par le Ministre ou un fonctionnaire ou employé de Sa Majesté à l'occasion de l'application de la présente loi et nul ne doit sciemment, sauf disposition contraire de la présente loi, communiquer de tels renseignements à une personne qui n'y a pas légalement droit, ni permettre qu'ils lui soient communiqués, ni permettre à une personne qui n'y a pas légalement droit de les examiner ou d'y avoir accès.

Communication
de renseigne-
ments
privilégiés

Exceptions

(2) Any information with respect to a person, business or proposed business obtained by the Minister or an officer or employee of Her Majesty in the course of the administration of this Act may,

(2) Tous renseignements qu'obtiennent sur une personne, une entreprise ou une entreprise proposée le Ministre ou un fonctionnaire ou employé de Sa Majesté à l'occasion de l'application de la présente loi peuvent,

Exceptions

(a) on request in writing to the Agency by or on behalf of the person to which the information relates or by or on behalf of the person or group of persons carrying on or proposing to carry on the business or new business to which the information relates, be communicated to any person or authority named in the request, or

a) sur demande écrite adressée à l'Agence ou par la personne que visent ces renseignements ou par la personne ou le groupe de personnes exploitant l'entreprise ou l'entreprise nouvelle que visent ces renseignements, ou en leur nom, être communiqués à toute personne ou autorité nommément désignée dans la demande, ou

(b) for any purpose relating to the administration of this Act, be communicated to a Minister of the Crown in right of any province or to an officer or employee of Her Majesty in right thereof

b) à toute fin se rattachant à l'application de la présente loi, être communiqués à un ministre de la Couronne du chef de toute province ou à un fonctionnaire ou employé de Sa Majesté du chef de ladite province,

on such terms and conditions and under such circumstances as are approved by the Minister.

selon les modalités et dans les cas que le Ministre approuve.

Evidence and
production of
documents

(3) Notwithstanding any other Act or law, no Minister of the Crown and no officer or employee of Her Majesty shall be required, in connection with any legal proceedings, to give evidence relating to any information that is privileged under subsection (1) or to produce any statement or other writing containing such information.

(3) Nonobstant toute autre loi ou règle de droit, aucun ministre de la Couronne ni aucun fonctionnaire ou employé de Sa Majesté ne peut être obligé, à l'occasion de procédures judiciaires, à témoigner sur des renseignements qui sont privilégiés en vertu du paragraphe (1) ni à produire une déclaration ou un autre écrit contenant de tels renseignements.

Témoignage et
production de
documents

Application of
subsections (1)
and (3)

(4) Subsections (1) and (3) do not apply in respect of

(4) Les paragraphes (1) et (3) ne s'appliquent pas

Application des
paragraphes (1)
et (3)

(a) legal proceedings relating to the administration or enforcement of this Act,

a) à des procédures judiciaires relatives à l'application ou à l'exécution de la présente loi,

(b) consultations under paragraph 11(3)(b) with any party to a proposed or actual investment in relation to which the information was obtained, or

b) à des consultations prévues à l'alinéa 11(3)b) avec toute partie à l'investissement proposé ou effectif, au sujet duquel les renseignements ont été recueillis, ni

(c) information contained in any written undertaking given to Her Majesty in right of

Canada relating to an investment that has been allowed by order of the Governor in Council,

but no Minister of the Crown and no officer or employee of Her Majesty may be required, in connection with any legal proceedings or otherwise, to give evidence relating to or otherwise to disclose any information referred to in paragraph (c) where, in the opinion of the Minister, the disclosure of such information is not necessary for any purpose relating to the administration or enforcement of this Act, and would prejudicially affect the person who gave the undertaking in the matter or conduct of his business affairs. 1973-74, c. 46, s. 14.

c) à des renseignements contenus dans tout engagement écrit envers Sa Majesté du chef du Canada remis à l'occasion d'un investissement que le gouverneur en conseil a autorisé par décret,

mais aucun ministre de la Couronne ni aucun fonctionnaire ou employé de Sa Majesté ne peut être obligé, à l'occasion de procédures judiciaires ou autrement, à témoigner sur des renseignements visés à l'alinéa c) ni à les divulguer d'une autre manière lorsque, de l'avis du Ministre, leur divulgation n'est pas indispensable à toute fin se rattachant à l'application ou à l'exécution de la présente loi, et serait de nature à léser, dans la substance ou la conduite de ses affaires commerciales, la personne qui a remis l'engagement. 1973-74, c. 46, art. 14.

INVESTIGATIONS

ENQUÊTES

Investigations

15. (1) Where the Minister has reasonable and probable grounds to believe that a non-eligible person or a group of persons any member of which is a non-eligible person

(a) is proposing to implement a proposed investment or has made an actual investment without complying with a demand that has been served on him by the Minister under subsection 8(3),

(b) is proposing to implement a proposed investment or has made an actual investment at a time when notice of the investment has been given under subsection 8(1), (2) or (3) but the Governor in Council has not, by order, allowed the investment and is not deemed to have allowed the investment, or

(c) is proposing to implement a proposed investment or has made an actual investment that the Governor in Council has, by order, allowed or is deemed to have allowed, on terms and conditions that vary materially from those disclosed in a notice thereof given under subsection 8(1), (2) or (3) and in any other information or evidence submitted in relation thereto,

he may cause an investigation to be made in connection with the matter.

15. (1) Le Ministre peut faire ouvrir une enquête lorsqu'il a des motifs sérieux et plausibles de croire qu'une personne non admissible ou qu'un groupe de personnes dont l'une est une personne non admissible

a) propose de mettre à exécution un investissement proposé ou a réalisé un investissement effectif sans se conformer à une mise en demeure que le Ministre lui a signifiée en vertu du paragraphe 8(3),

b) propose de mettre à exécution un investissement proposé ou a réalisé un investissement à un moment où un avis de l'investissement a été donné en vertu du paragraphe 8(1), (2) ou (3) sans que le gouverneur en conseil ait, par décret, autorisé l'investissement ni qu'il soit réputé l'avoir autorisé, ou

c) propose de mettre à exécution un investissement proposé ou a réalisé un investissement effectif que le gouverneur en conseil a, par décret, autorisé ou est réputé avoir autorisé, selon des modalités qui s'écartent sensiblement de celles qui sont révélées dans l'avis donné en vertu du paragraphe 8(1), (2) ou (3) et dans quelque autre renseignement ou preuve fournis à ce sujet.

Enquêtes

Idem

(2) The Minister may designate any person to carry out an investigation under this section and shall furnish any person so designated with a certificate of his designation as such. 1973-74, c. 46, s. 15.

(2) Le Ministre peut désigner toute personne pour effectuer une enquête prévue par le présent article et il doit fournir à toute personne ainsi désignée un certificat de sa nomination en cette qualité. 1973-74, c. 46, art. 15.

Idem

Powers of
Minister in
relation to
investigations

16. (1) For the purposes of an investigation under section 15, the Minister may

(a) by notice in writing require the non-eligible person who, or any member or members of the group of persons that, he has reason to believe is proposing to make or has made the proposed or actual investment, as the case may be, and, where the non-eligible person or any such member is a corporation, any officer of such corporation, to make to the Agency, within a time stated in the notice, a written return under oath showing in detail such information with respect to the proposed or actual investment as is specified in the notice; and without restricting the generality of the foregoing, the Minister may require full disclosure and production of all contracts or agreements that the non-eligible person or the group of persons or any member thereof may have at any time entered into with any other person touching or concerning the investment;

(b) authorize any person designated by him to carry out the investigation to enter any premises on which the Minister believes there may be evidence relevant to the proposed or actual investment and examine any thing on the premises or copy or take away for further examination or copying any book, paper, record or other document that in the opinion of the person so designated may afford such evidence;

(c) direct any person designated by him to carry out the investigation to inspect any book, paper, record or other document taken away for further examination under paragraph (b);

(d) have copies, pictures or other reproductions made of any book, paper, record or other document referred to in paragraph (c); and

(e) by notice in writing, require information on oath.

Examination on
oath

(2) For the purposes of an investigation under section 15, a judge of a superior, county or district court may, on *ex parte* application on behalf of the Minister, order that any person attend before him as a witness to be examined on oath on behalf of the Minister, or to make production of books, papers, records or other documents to the Commissioner.

16. (1) Pour les fins d'une enquête prévue par l'article 15, le Ministre peut

a) par avis écrit, enjoindre à la personne non admissible ou à un ou plusieurs membres du groupe de personnes dont il a des raisons de croire qu'ils proposent de réaliser ou ont réalisé l'investissement proposé ou effectif, selon le cas, et, lorsque la personne non admissible ou un des membres du groupe est une corporation, à un membre de la direction de cette corporation, de remettre à l'Agence, dans le délai indiqué dans l'avis, une déclaration écrite sous serment donnant sur l'investissement proposé ou effectif les renseignements détaillés que précise l'avis et, sans restreindre la généralité de ce qui précède, le Ministre peut exiger une communication et une production complètes de tous les contrats ou accords que la personne non admissible, le groupe de personnes ou tout membre de ce groupe peut avoir, à un moment quelconque, conclu avec une autre personne en ce qui concerne l'investissement ou sur ce qui s'y rattache;

b) autoriser toute personne qu'il a désignée pour effectuer l'enquête à entrer dans des locaux où il pense qu'il peut y avoir une preuve se rapportant à l'investissement proposé ou effectif et examiner tout ce qui s'y trouve, en prendre copie ou l'emporter pour l'examiner plus attentivement ou pour prendre copie de tout livre, pièce, dossier ou autre document qui, de l'avis de la personne désignée, peut fournir cette preuve;

c) ordonner à toute personne qu'il a désignée pour effectuer l'enquête de compiler tout livre, pièce, dossier ou autre document emportés en vertu de l'alinéa b), en vue de l'examiner plus attentivement;

d) faire établir des copies, photographies ou autres reproductions de tout livre, pièce, dossier ou autre document visés à l'alinéa c); et

e) par avis écrit, exiger la fourniture de renseignements sous serment.

Pouvoirs du
Ministre en
matière
d'enquêtes

(2) Pour les fins d'une enquête prévue à l'article 15, un juge d'une cour supérieure, d'une cour de comté ou d'une cour de district peut, sur demande *ex parte* faite au nom du Ministre, ordonner à toute personne de comparaître devant lui comme témoin pour être interrogée sous serment au nom du Ministre, ou pour produire des livres, pièces, dossiers ou autres documents au commissaire.

Interrogatoire
sous serment

Documents, etc., shall be delivered to Commissioner	(3) Any books, papers, records or other documents produced under subsection (2) shall be delivered to the Commissioner, who is thereafter responsible for the custody thereof.	(3) Tous livres, pièces, dossiers ou autres documents produits en vertu du paragraphe (2) doivent être remis au commissaire qui devient alors responsable de leur garde.	Les documents, etc., doivent être remis au commissaire
Return of original or copy of documents	(4) The original or a copy of any book, paper, record or other document taken away under paragraph (1)(b) or produced under subsection (2) shall be returned to the person from whose custody it was taken, to the person who produced it or to a person entitled thereto within fourteen days after it was taken or produced, or within such longer period as is directed by a judge of a superior, county or district court for cause or agreed to by the person who is entitled to its return or delivery.	(4) L'original ou la copie de tout livre, pièce, dossier ou autre document emporté en vertu de l'alinéa (1)b) ou produit en vertu du paragraphe (2) doit être restitué à la personne qui en avait la garde, à la personne qui l'a produit ou à une personne y ayant droit, dans les quatorze jours qui suivent la date à laquelle il a été emporté ou produit, ou dans tel délai plus long qu'ordonne un juge d'une cour supérieure, d'une cour de comté ou d'une cour de district pour un motif suffisant ou qu'accepte la personne ayant droit à sa restitution ou à sa remise.	Restitution de l'original ou de la copie de documents
Notice of application for extension of time	(5) An application to a judge mentioned in subsection (4) for a direction under that subsection shall be made on notice to the person from whose custody the book, paper, record or other document was taken, the person who produced it or the person entitled to its return or delivery.	(5) Lorsqu'une demande visée au paragraphe (4) est présentée à un juge en vue d'obtenir une directive prévue par ce paragraphe, avis doit en être donné soit à la personne qui avait la garde du livre, pièce, dossier ou autre document, soit à celle qui les a produits, soit à celle qui a droit à sa restitution ou à sa remise.	Avis de la demande de prorogation
Fees to persons required to attend	(6) Every person required by an order made under subsection (2) to attend before a judge of a superior, county or district court is entitled to the like fees and allowances for so doing as if summoned to attend before the Federal Court. 1973-74, c. 46, s. 16.	(6) Toute personne requise, par une ordonnance rendue en application du paragraphe (2), de comparaître devant un juge d'une cour supérieure, d'une cour de comté ou d'une cour de district a droit, lorsqu'elle comparaît, aux indemnités qu'elle recevrait si elle avait été sommée de comparaître devant la Cour fédérale. 1973-74, c. 46, art. 16.	Indemnité aux personnes requises de comparaître
Authority for notice	17. (1) The Minister shall not issue a notice under paragraph 16(1)(a) unless, on <i>ex parte</i> application on behalf of the Minister, a judge of a superior, county or district court certifies that a notice thereunder may be issued to the person or persons named in the application.	17. (1) Le Ministre ne doit notifier un avis en vertu de l'alinéa 16(1)a) que si, sur demande <i>ex parte</i> faite en son nom, un juge d'une cour supérieure, d'une cour de comté ou d'une cour de district certifie que cet avis peut être donné à la ou aux personnes nommément désignées dans la demande.	Pouvoir de donner avis
Authority for entry of premises	(2) A person designated by the Minister to carry out an investigation under this Act shall, before exercising the power conferred by paragraph 16(1)(b), produce to an occupant of the premises a certificate from a judge of a superior, county or district court, which may be granted by such a judge on <i>ex parte</i> application on behalf of the Minister, authorizing the exercise of such power.	(2) Une personne que le Ministre désigne pour effectuer une enquête prévue par la présente loi doit, avant d'exercer le pouvoir que lui confère l'alinéa 16(1)b), présenter à un occupant des locaux un certificat émanant d'un juge d'une cour supérieure, d'une cour de comté ou d'une cour de district, qui peut l'accorder sur demande <i>ex parte</i> faite au nom du Ministre, l'autorisant à exercer ce pouvoir.	Pouvoir d'entrer dans des locaux
Duty of persons in control of premises	(3) Every person who is in possession or control of any premises mentioned in paragraph 16(1)(b) shall, upon compliance with	(3) Toute personne qui est en possession ou a la charge de locaux visés à l'alinéa 16(1)b) doit, dès que la personne que le Ministre a	Obligation des personnes ayant la charge des locaux

subsection (2) by a person designated by the Minister to carry out an investigation under this Act, permit the person so designated to enter the premises, to examine any thing on the premises and to copy or take away any book, paper, record or other document on the premises.

désignée pour effectuer une enquête prévue par la présente loi s'est conformée aux dispositions du paragraphe (2), lui permettre d'entrer dans les locaux, d'examiner tout ce qu'il s'y trouve et de prendre copie ou d'emporter tout livre, pièce, dossier ou autre document qui s'y trouve.

Application to court

(4) Where a person acting under paragraph 16(1)(b) is refused admission or access to any premises or any thing thereon, or where any such person has reasonable grounds to believe that such admission or access will be refused, a judge of a superior, county or district court, on *ex parte* application by that person, may by order direct a peace officer to take such steps as to the judge seem necessary to give that person such admission or access.

(4) Lorsqu'une personne agissant en vertu de l'alinéa 16(1)b) se voit refuser l'entrée ou l'accès à des locaux ou à ce qui s'y trouve ou lorsqu'elle a des motifs sérieux de croire qu'on lui refusera cette entrée ou cet accès, un juge d'une cour supérieure, d'une cour de comté ou d'une cour de district peut, sur demande *ex parte* de cette personne, enjoindre par ordonnance à un agent de la paix de prendre les mesures que le juge estime nécessaires pour permettre à cette personne d'entrer dans ces locaux ou d'y avoir accès à ce qui s'y trouve.

Demande à la cour

Authority for examination

(5) The Minister shall not exercise his power under paragraph 16(1)(e) to require the giving of information on oath unless, on *ex parte* application on behalf of the Minister, a judge of a superior, county or district court certifies that the Minister may make such a requirement to the person named in the application.

(5) Le Ministre ne doit exercer le pouvoir que lui confère l'alinéa 16(1)e) d'exiger la fourniture de renseignements sous serment que si, sur demande *ex parte* faite au nom du Ministre, un juge d'une cour supérieure, d'une cour de comté ou d'une cour de district certifie que le Ministre peut imposer cette obligation à la personne nommément désignée dans la demande.

Pouvoir d'interroger

Grounds on which judge may act

(6) A judge of a superior, county or district court may act under subsection (1), (2), (4) or (5) where he is satisfied that there are reasonable grounds for requiring the information or entering the premises or that admission or access has been refused, or that there are reasonable grounds for believing that admission or access will be refused, as the case may be. 1973-74, c. 46, s. 17.

(6) Un juge d'une cour supérieure, d'une cour de comté ou d'une cour de district peut agir en vertu des paragraphes (1), (2), (4) ou (5) lorsqu'il est convaincu, selon le cas, qu'il existe des motifs sérieux de demander les renseignements ou d'entrer dans les locaux, que l'entrée ou l'accès en a été refusé ou qu'il existe des motifs sérieux de croire que l'entrée ou l'accès sera refusé. 1973-74, c. 46, art. 17.

Motifs permettant au juge d'agir

Copies of documents

18. Subject to section 17 of the *Statistics Act* but notwithstanding any other Act, a copy of any book, paper, record or other document that is copied or taken away under paragraph 16(1)(b) or that is produced under subsection 16(2) is admissible in evidence in any prosecution for an offence under this Act or in any proceedings under this Act and is, in the absence of evidence to the contrary, proof of the contents thereof. 1973-74, c. 46, s. 18.

18. Sous réserve de l'article 17 de la *Loi sur la statistique*, mais nonobstant les dispositions de toute autre loi, une copie de tout livre, pièce, dossier ou autre document dont il est pris copie, ou qui est emporté en vertu de l'alinéa 16(1)b), ou qui est produit en vertu du paragraphe 16(2), peut être admise en preuve dans une poursuite à raison d'une infraction à la présente loi ou dans toutes procédures prévues par la présente loi et, en l'absence de preuve contraire, elle fait foi de son contenu. 1973-74, c. 46, art. 18.

Copies de documents

REMEDIES

SANCTIONS

Injunction

19. (1) Where, on application on behalf of the Minister, a superior court is satisfied that a non-eligible person or a group of persons any member of which is a non-eligible person is about to make or has made a proposed or actual investment in circumstances in which

(a) the Governor in Council has not, by order, allowed the investment and is not deemed to have allowed it, or

(b) although the Governor in Council has, by order, allowed the investment or is deemed to have allowed it, the terms and conditions on which the investment is about to be made or has been made, as the case may be, vary materially from those disclosed in any notice in writing given under subsection 8(1), (2) or (3) and in any other information or evidence given under this Act in relation thereto,

the court may, by order, if at that time the proposed investment has not yet been made, enjoin that person or group of persons from making the proposed investment, and if at that time the investment has already been made, enjoin that person or group of persons from taking any particular action specified in the order in relation to the actual investment that in the opinion of the court would prejudice or be likely to prejudice the ability of a superior court, on any subsequent application under section 20, effectively to accomplish the end to which any order under that section may be directed.

Notice of application

(2) Subject to subsection (3), at least forty-eight hours notice of an application for an order under subsection (1) shall be given on behalf of the Minister to the person or to each member of the group of persons against whom the order is sought.

Ex parte application

(3) Where a superior court to which an application is made under subsection (1) is satisfied that

(a) subsection (2) cannot reasonably be complied with, or

(b) the urgency of the situation is such that service of a notice in accordance with subsection (2) would not be in the public interest,

Injonction

19. (1) Quand, à la suite d'une demande faite au nom du Ministre, une cour supérieure est convaincue qu'une personne non admissible ou un groupe de personnes dont un membre est une personne non admissible est sur le point de faire ou a fait un investissement proposé ou effectif

a) alors que le gouverneur en conseil n'a pas, par décret, autorisé cet investissement et n'est pas réputé l'avoir autorisé, ou

b) alors que le gouverneur en conseil a autorisé par décret cet investissement, ou est réputé l'avoir autorisé, mais que les conditions auxquelles l'investissement est sur le point de se réaliser ou a été réalisé, selon le cas, s'écartent sensiblement de celles que révèlent tout avis écrit donné en vertu des paragraphes 8(1), (2) ou (3) et tous autres renseignements ou preuve fournis à ce sujet en vertu de la présente loi,

la cour peut, par ordonnance, si l'investissement proposé n'a pas encore été réalisé à ce moment, enjoindre à cette personne ou à ce groupe de personnes de ne pas réaliser l'investissement proposé et, si l'investissement a déjà été réalisé à ce moment, enjoindre à cette personne ou à ce groupe de personnes de ne prendre à cet égard aucune des mesures, précisées, en ce qui concerne l'investissement effectif, dans l'ordonnance, qui, de l'avis de la cour, préjudicieraient ou seraient susceptibles de préjudicier à la capacité que pourrait avoir une cour supérieure, saisie en vertu de l'article 20 d'une demande ultérieure, d'atteindre effectivement le but que peut viser toute ordonnance prévue par cet article.

Avis de la demande

(2) Sous réserve du paragraphe (3), le Ministre doit, avant de présenter une demande d'ordonnance prévue par le paragraphe (1), donner un préavis d'au moins quarante-huit heures à la personne ou à chaque membre du groupe de personnes contre laquelle ou lequel il demande cette ordonnance.

Demande ex parte

(3) Lorsqu'une cour supérieure saisie d'une demande prévue au paragraphe (1) est convaincue

a) qu'on ne peut raisonnablement se conformer au paragraphe (2), ou

b) que l'urgence de la situation est telle que la signification d'un avis conformément au

it may proceed with the application *ex parte* but any order made under subsection (1) by the court on *ex parte* application shall have effect only for such period, not exceeding ten days, as is specified in the order.

paragraphe (2) serait contraire à l'intérêt général,

elle peut donner suite à la demande *ex parte*, mais l'ordonnance que rend la cour en vertu du paragraphe (1) sur demande *ex parte* ne doit avoir d'effets que pour la période, d'au plus dix jours, que précise l'ordonnance.

Terms of order

(4) An order under subsection (1)

(a) shall be in such terms as the court that makes the order considers necessary and sufficient to meet the circumstances of the case; and

(b) subject to subsection (3), shall have effect for such period of time as is specified therein.

(4) Une ordonnance rendue en vertu du paragraphe (1) doit

a) être libellée de la manière que la cour estime nécessaire et suffisante pour répondre aux besoins en l'occurrence; et

b) sous réserve du paragraphe (3), avoir effet pendant la période qui est précisée.

Libellé de l'ordonnance

Extension or cancellation of order

(5) A superior court that makes an order under subsection (1), at any time and from time to time on application on behalf of the Minister or by any person to whom the order is directed, notice of which has been given to the persons to whom the order is directed or to the Minister and all other such persons, as the case may be, may by a further order,

(a) notwithstanding subsections (3) and (4), continue the order, with or without modification, for such definite period as is stated in the further order or, where the Governor in Council by order refuses to allow the investment to which the order relates, indefinitely; or

(b) revoke the order.

(5) Sur demande, présentée au nom du Ministre ou par toute personne que vise une ordonnance, et notifiée, selon le cas, aux personnes que vise l'ordonnance ou au Ministre et à toutes ces autres personnes, une cour supérieure qui rend une ordonnance prévue au paragraphe (1) peut à n'importe quel moment et à l'occasion, par une nouvelle ordonnance,

a) nonobstant les paragraphes (3) et (4), proroger l'ordonnance avec ou sans modifications, soit pendant le délai ferme qui est indiqué dans la nouvelle ordonnance, soit lorsque le gouverneur en conseil refuse par décret d'autoriser l'investissement que vise l'ordonnance, sans limitation de durée; ou

b) révoquer l'ordonnance.

Prorogation ou annulation de l'ordonnance

Duty of the Minister

(6) Where an order is made under subsection (1) and notice in writing has been given or is thereafter given under subsection 8(1), (2) or (3) to the Agency of the proposed or actual investment to which the order relates, the Minister shall proceed as expeditiously as possible to assess whether or not, in his opinion, having regard to the factors enumerated in subsection 2(2), the investment is or is likely to be of significant benefit to Canada; and where the Governor in Council subsequently allows or is deemed to have allowed the investment, the order made under subsection (1) is thereupon revoked. 1973-74, c. 46, s. 19.

(6) Lorsqu'une ordonnance est rendue en vertu du paragraphe (1) et que l'Agence a reçu ou reçoit par la suite, en vertu des paragraphes 8(1), (2) ou (3), avis écrit de l'investissement proposé ou effectif que vise l'ordonnance, le Ministre doit, avec toute la diligence possible, apprécier si, à son avis, l'investissement compte tenu des facteurs énumérés au paragraphe 2(2), apporte ou est susceptible d'apporter des avantages appréciables au Canada; et lorsque le gouverneur en conseil autorise par la suite l'investissement ou est réputé l'avoir autorisé, l'ordonnance rendue en vertu du paragraphe (1) est révoquée. 1973-74, c. 46, art. 19.

Obligation du Ministre

Order to render investment nugatory

20. (1) Where a non-eligible person or group of persons any member of which is a non-eligible person has made an actual investment in circumstances in which

(a) a demand has been served by the Minister under subsection 8(3) in relation to the

20. (1) Lorsqu'une personne non admissible ou un groupe de personnes dont l'une est une personne non admissible a réalisé un investissement effectif

a) alors que le Ministre a signifié en vertu du paragraphe 8(3) relativement à cet inves-

Ordonnance frappant de nullité l'investissement

investment and has not been complied with within the time stipulated in the demand,
 (b) the Governor in Council has, by order, refused to allow the investment, or
 (c) although the Governor in Council has, by order, allowed the investment or is deemed to have allowed it, the terms and conditions on which the investment has been made vary materially from those disclosed in any notice in writing given under subsection 8(1), (2) or (3) and in any other information or evidence given under this Act in relation thereto,

a superior court, on application on behalf of the Minister, may make such order as, in its opinion, is required in the circumstances, to the end that the investment shall be rendered nugatory not later than the expiry of such period of time as the court considers necessary to allow in order to avoid or reduce, to the greatest possible extent consistent with the attainment of that end, any undue hardship to any person who was not involved in the investment knowing it to be subject to be rendered nugatory under this Act.

tissement une mise en demeure dont les dispositions n'ont pas été observées dans le délai y stipulé,

b) alors que le gouverneur en conseil a, par décret, refusé d'autoriser l'investissement, ou

c) alors que le gouverneur en conseil a autorisé par décret l'investissement, ou est réputé l'avoir autorisé, mais que les conditions auxquelles l'investissement a été réalisé s'écartent sensiblement de celles que révèlent tout avis écrit donné en vertu des paragraphes 8(1), (2) ou (3) et tous autres renseignements ou preuve fournis à ce sujet en vertu de la présente loi,

une cour supérieure peut, sur demande présentée au nom du Ministre, rendre l'ordonnance qui, à son avis, s'impose dans ces circonstances afin de frapper de nullité l'investissement et ce, au plus tard le dernier jour du délai que la cour estime nécessaire pour éviter ou réduire, dans la mesure qui soit la plus compatible avec l'objectif visé, toutes difficultés injustifiées pour quiconque, excepté les personnes ayant participé à l'investissement tout en sachant que celui-ci était susceptible d'être frappé de nullité en vertu de la présente loi.

Idem

(2) Without limiting the generality of subsection (1), a superior court may, by any order made by it under that subsection, on application on behalf of the Minister and to the end described in that subsection, direct the doing of any or all of the following acts or things:

(a) the revocation or suspension, for any period specified in the order, of any voting rights attached to any shares of a corporation or of any right to control any such voting rights,

(b) the disposition by any person of any shares of a corporation acquired by him, or

(c) the disposition by any person of any property acquired by him that is or was used in carrying on a business,

on such terms and subject to such conditions, if any, as the court deems just and reasonable but no such order shall direct the doing of any of the acts or things described in paragraphs (a) to (c) by a person who was not involved in the investment to which the application under this section relates and was not involved in any subsequent transaction relating to property that was the subject of that investment knowing, or in circumstances where he ought reasonably to have

Idem

(2) Sans limiter la généralité du paragraphe (1), une cour supérieure peut, par une ordonnance qu'elle rend en vertu de ce paragraphe, sur demande présentée au nom du Ministre et aux fins mentionnées dans ce paragraphe, ordonner l'accomplissement de l'un des actes ou de tous les actes qui suivent:

a) l'annulation ou la suspension, pour une période précisée dans l'ordonnance, des droits de vote attachés à des actions d'une corporation ou de tout droit de contrôle sur ces droits de vote,

b) l'aliénation par toute personne des actions d'une corporation qu'elle a acquises, ou

c) l'aliénation par toute personne de biens qu'elle a acquis et qui servent ou ont servi à l'exploitation d'une entreprise,

aux conditions et selon les modalités, le cas échéant, que la cour estime justes et raisonnables, mais aucune ordonnance semblable ne doit ordonner l'accomplissement de l'un des actes visés aux alinéas a) à c) par une personne qui n'a pas participé à l'investissement auquel a trait la demande prévue par le présent article et qui n'a pas participé à aucune transaction subséquente relative au bien, objet de cet investis-

known, that that investment was subject to be rendered nugatory under this Act.

sement, sachant, ou dans des circonstances où elle aurait dû raisonnablement savoir, que cet investissement était susceptible d'être frappé de nullité en vertu de la présente loi.

Compliance

(3) Where any shares of a corporation or any property used in carrying on a business, in respect of which an order directing the doing of any act or thing described in paragraph (2)(b) or (c) has been made, are held by a person outside Canada and that person fails, within such reasonable time as is fixed by the court, to comply with the order, the court may, by order, vest such shares or property in a trustee named by it who may thereupon, notwithstanding any other Act or law, do all such things and execute all such documents as are necessary to give effect to the order of the court, and any proceeds of disposition of the shares or property received by him shall first be applied to payment of his fees and expenses in acting as such trustee and thereafter any balance remaining shall be paid by him to such person or persons as would, but for the order vesting such shares or property in him, have been entitled to receive the same. 1973-74, c. 46, s. 20.

(3) Lorsque des actions d'une corporation ou des biens utilisés pour exploiter une entreprise qui ont fait les uns ou les autres, l'objet d'une ordonnance enjoignant l'accomplissement de l'un des actes visés aux alinéas (2)b) ou c), sont détenus par une personne qui se trouve à l'extérieur du Canada et que cette personne omet, dans le délai raisonnable que fixe la cour, de se conformer à l'ordonnance, la cour peut par ordonnance, confier ces actions ou biens à un fiduciaire qu'elle nomme et qui peut, nonobstant toute autre loi ou règle de droit, accomplir tous les actes et signer tous les documents nécessaires pour donner effet à l'ordonnance de la cour; le produit de l'aliénation des actions ou des biens qu'il reçoit s'applique en premier lieu au paiement de ses honoraires et débours de fiduciaire et, s'il reste un solde, il doit le verser à la personne ou aux personnes qui auraient eu le droit de le recevoir si ces actions ou ces biens ne lui avaient pas été confiés par l'ordonnance. 1973-74, c. 46, art. 20.

Observation

Order to comply with undertaking

21. Where a person who has given a written undertaking to Her Majesty in right of Canada relating to an investment that has been allowed by order of the Governor in Council fails or refuses to comply with such undertaking, a superior court may, on application on behalf of the Minister, make an order directing that person to comply with the undertaking. 1973-74, c. 46, s. 21.

21. Lorsqu'une personne qui a contracté un engagement écrit envers Sa Majesté du chef du Canada relativement à un investissement que le gouverneur en conseil a autorisé par décret omet ou refuse de se conformer à cet engagement, une cour supérieure peut, sur demande présentée au nom du Ministre, rendre une ordonnance enjoignant à cette personne de se conformer à cet engagement. 1973-74, c. 46, art. 21.

Ordre de se conformer à un engagement

Contempt of court

22. Any person who fails or refuses to comply with an order made by a superior court under section 19, 20 or 21 that is directed to him may be cited and punished by the court that made the order, as for other contempts of that court. 1973-74, c. 46, s. 22.

22. Toute personne qui omet ou refuse de se conformer à une ordonnance que rend à son encontre une cour supérieure en vertu des articles 19, 20 ou 21 peut être assignée à comparaître et condamnée, pour outrage à la cour, par la cour qui a rendu l'ordonnance. 1973-74, c. 46, art. 22.

Outrage à la cour

Rights of appeal

23. For greater certainty, all rights of appeal provided for by law apply in the case of any decision or order made by a superior court under this Act, as in the case of other decisions or orders made by that court. 1973-74, c. 46, s. 23.

23. Il est précisé, pour plus de sûreté, que tous les droits d'appel prévus par la loi peuvent être exercés à l'encontre de toute décision ou ordonnance que rend une cour supérieure en vertu de la présente loi, comme pour les autres décisions ou ordonnances de cette cour. 1973-74, c. 46, art. 23.

Droits d'appel

OFFENCES

INFRACTIONS

Failure to give notice of proposed investment

24. (1) Any person who makes an actual investment, and each member of a group of persons that makes an actual investment, in circumstances in which notice of a proposal to make such investment was required to be given under subsection 8(1) or (2) by him or by the group of persons of which he is a member, and who knowingly failed to give such notice substantially in the form and manner and containing substantially the information prescribed by the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars.

Failure to comply with notice

(2) Any person on whom a demand is served by the Minister under subsection 8(3), and who knowingly fails to give notice substantially in the form and manner and containing substantially the information prescribed by the regulations, within the time stipulated in the demand, is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding six months or to both. 1973-74, c. 46, s. 24.

Communication of privileged information

25. Any person who violates section 14 is guilty of an offence punishable on summary conviction. 1973-74, c. 46, s. 25.

Offences in relation to investigations

26. Any person who knowingly

- (a) in any manner impedes or prevents or attempts to impede or prevent any investigation under this Act,
- (b) violates subsection 17(3),
- (c) without lawful excuse, the proof of which lies on him, fails to comply with a notice in writing under paragraph 16(1)(a) or (e), or
- (d) fails to comply with an order made under subsection 16(2),

is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or imprisonment for a term not exceeding six months or to both. 1973-74, c. 46, s. 26.

Officers, etc., of corporations

27. Where a corporation is guilty of an offence under subsection 24(1) or (2), or under section 26 by virtue of a violation of subsection 17(3) or of failing to comply with a notice in

24. (1) Toute personne qui réalise un investissement effectif et chaque membre d'un groupe de personnes qui réalise un investissement effectif alors que cette personne ou ce membre d'un groupe de personnes était tenu de donner avis de la réalisation de cet investissement en vertu des paragraphes 8(1) ou (2) mais a sciemment omis de donner cet avis essentiellement en la forme et de la manière, et de fournir les renseignements essentiels, que prescrivent les règlements, est coupable d'une infraction et passible sur déclaration sommaire de culpabilité d'une amende de cinq mille dollars au plus.

(2) Toute personne à laquelle le Ministre a signifié une mise en demeure en vertu du paragraphe 8(3) et qui omet sciemment de donner avis essentiellement en la forme et de la manière, et de fournir des renseignements essentiels, que prescrivent les règlements, dans le délai fixé dans la mise en demeure, est coupable d'une infraction et passible, sur déclaration sommaire de culpabilité, d'une amende de dix mille dollars au plus ou d'un emprisonnement de six mois au plus, ou de l'une et l'autre peine. 1973-74, c. 46, art. 24.

25. Est coupable d'une infraction punissable sur déclaration sommaire de culpabilité quiconque viole l'article 14. 1973-74, c. 46, art. 25.

26. Est coupable d'une infraction et passible, sur déclaration sommaire du culpabilité, d'une amende de cinq mille dollars au plus ou d'un emprisonnement de six mois au plus, ou de l'une et l'autre peine, quiconque, sciemment,

- a) de quelque manière que ce soit, entrave ou empêche ou tente d'entraver ou d'empêcher une enquête prévue par la présente loi,
- b) viole le paragraphe 17(3),
- c) sans excuse légitime, dont la preuve lui incombe, omet de se conformer à la notification écrite prévue aux alinéas 16(1)a) ou e), ou
- d) omet de se conformer à une ordonnance rendue en application du paragraphe 16(2). 1973-74, c. 46, art. 26.

27. Lorsqu'une corporation est coupable d'une infraction prévue aux paragraphes 24(1) ou (2) ou à l'article 26 en raison d'une violation du paragraphe 17(3) ou de l'inobservation

Défaut d'avis d'un investissement proposé

Défaut de se conformer à la mise en demeure de donner avis

Communication de renseignements privilégiés

Infractions en matière d'enquêtes

Membres de la direction, etc., des corporations

writing under paragraph 16(1)(a), any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted therefor. 1973-74, c. 46, s. 27.

d'une notification écrite donnée en vertu de l'alinéa 16(1)a), tout membre de la direction, administrateur ou mandataire de la corporation qui a ordonné ou autorisé la commission de l'infraction ou qui y a consenti, acquiescé ou participé, est partie à l'infraction et coupable de celle-ci, et est passible, sur déclaration de culpabilité, de la peine prévue pour cette infraction, que la corporation ait ou non été poursuivie ou déclarée coupable de celle-ci. 1973-74, c. 46, art. 27.

GENERAL

DISPOSITIONS GÉNÉRALES

Regulations

28. The Governor in Council may make regulations prescribing anything that, pursuant to any provision of this Act, is to be prescribed by the regulations. 1973-74, c. 46, s. 28.

28. Le gouverneur en conseil peut établir des règlements prescrivant tout ce qui, en application des dispositions de la présente loi, doit être prescrit par les règlements. 1973-74, c. 46, art. 28.

Règlements

Certificate of Commissioner as to notice

29. In any prosecution for an offence under this Act or in any proceeding under this Act, a certificate purporting to be signed by the Commissioner setting out that a notice, described with reasonable particularity, that is required or authorized to be given or sent to or by the Agency under this Act was or was not given or sent, and if given or sent, was received or was given or sent by the Agency on a day specified therein, is evidence of the facts alleged therein without proof of the signature or of the official character of the person by whom it purports to be signed. 1973-74, c. 46, s. 29.

29. Dans toute poursuite à raison d'une infraction prévue par la présente loi ou dans toutes procédures prévues par la présente loi, lorsqu'un certificat présenté comme étant signé du commissaire énonce qu'un avis, décrit de façon raisonnablement détaillée, dont la présente loi exige ou autorise la remise ou l'envoi à l'Agence ou la remise ou l'envoi par ses soins a été remis ou envoyé par l'Agence à la date qui y est spécifiée, ce certificat fait foi des faits y allégués, sans qu'il soit nécessaire de prouver l'authenticité de la signature ni la qualité officielle de la personne dont il est réputé porter la signature. 1973-74, c. 46, art. 29.

Certificat du commissaire en ce qui concerne les avis

Report to Parliament

30. The Minister shall, within one hundred and eighty days after the end of each fiscal year, prepare a report on the operations under this Act for that year, and the Minister shall cause such report to be laid before Parliament forthwith upon the completion thereof, or if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting. 1973-74, c. 46, s. 30.

30. Dans les cent quatre-vingts jours suivant la fin de chaque année financière, le Ministre doit établir un rapport sur les opérations effectuées en vertu de la présente loi au cours de cette année, et faire déposer ce rapport au Parlement dès qu'il est terminé ou, si le Parlement ne siège pas à ce moment-là, dans les quinze premiers jours où il siège par la suite. 1973-74, c. 46, art. 30.

Rapport au Parlement

COMING INTO FORCE

ENTRÉE EN VIGUEUR

Commencement

31. (1) Subject to subsection (2), this Act shall come into force on a day to be fixed by proclamation, such a day to be not later than one hundred and eighty days after Royal Assent.

31. (1) Sous réserve du paragraphe (2), la présente loi entrera en vigueur au jour qui sera fixé par proclamation et ce jour ne doit pas être postérieur au cent quatre-vingtième jour qui suit la sanction royale.

Entrée en vigueur

Provisions applicable to new businesses

(2) Section 6 of this Act, and the other provisions of this Act in so far as they relate to the establishment of new businesses in Canada, shall come into force on such day, not earlier

(2) L'article 6 et les autres dispositions de la présente loi qui se rattachent à la création au Canada d'entreprises nouvelles entreront en vigueur au jour, qui ne pourra pas être anté-

Dispositions applicables aux entreprises nouvelles

than the day fixed by any proclamation issued under subsection (1), as is fixed by proclamation under this subsection.

(3) Effective upon the day fixed by any proclamation issued under subsection (2), the exception provided by paragraph 5(1)(c) from the application of this Act in respect of any acquisition of control of a Canadian business enterprise ceases to apply in respect of any acquisition of control of such an enterprise by any non-eligible person, or by any group of persons any member of which is a non-eligible person,

(a) if immediately before the time when control of the Canadian business enterprise is proposed to be acquired or has actually been acquired, as the case may be, no other business is or was carried on in Canada by that person or group of persons; or

(b) if each other business carried on in Canada by that person or group of persons immediately before the time referred to in paragraph (a) is or was a business to which the Canadian business enterprise, the control of which is proposed to be acquired or has actually been acquired, as the case may be, is or was unrelated. 1973-74, c. 46, s. 31.

rieur à celui qui sera fixé par proclamation faite en application du paragraphe (1), que fixera une proclamation effectuée en vertu du présent paragraphe.

(3) A compter du jour fixé par toute proclamation faite en application du paragraphe (2), l'exception de l'application de la présente loi que prévoit l'alinéa 5(1)c) à l'égard de toute acquisition du contrôle d'une entreprise commerciale canadienne cesse de s'appliquer en ce qui concerne toute acquisition du contrôle d'une telle entreprise que réalise toute personne non admissible ou groupe de personnes dont un membre est une personne non admissible,

a) si, immédiatement avant le moment où l'on propose d'acquérir le contrôle de cette entreprise commerciale canadienne ou celui où l'on a effectivement acquis ce contrôle, selon le cas, cette personne ou ce groupe de personnes n'exploite aucune autre entreprise au Canada; ou

b) si chacune des autres entreprises que cette personne ou ce groupe de personnes exploitait au Canada immédiatement avant le moment que vise l'alinéa a) est ou était une entreprise avec laquelle l'entreprise commerciale canadienne dont on propose d'acquérir le contrôle ou dont on a effectivement acquis le contrôle, selon le cas, n'est ou n'était pas liée. 1973-74, c. 46, art. 31.

Effect of
proclamation
under
subsection (2)

Effet de la
proclamation
que prévoit le
paragraphe (2)

JUN 9 1993

